

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 600

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

AN ACT

RELATING TO PUBLIC SCHOOLS; ALLOWING CHARTER SCHOOLS TO DECIDE
THEIR CHARTERING AUTHORITY; ALLOWING CHARTER SCHOOLS TO CHANGE
THEIR CHARTERING AUTHORITY WHEN RENEWING THEIR CHARTERS;
CREATING A CHARTER SCHOOLS DIVISION IN THE PUBLIC EDUCATION
DEPARTMENT; PROVIDING POWERS AND DUTIES; PROVIDING FOR
APPROVAL, DENIAL, RENEWAL, SUSPENSION OR REVOCATION OF STATE-
CHARTERED CHARTER SCHOOLS BY THE PUBLIC EDUCATION COMMISSION;
MAKING STATE-CHARTERED CHARTER SCHOOLS INDEPENDENT OF SCHOOL
DISTRICTS; REQUIRING STATE-CHARTERED CHARTER SCHOOLS TO BE
BOARDS OF FINANCE; CLARIFYING RESPONSIBILITIES OF CHARTER
SCHOOLS AND GOVERNING BODIES; CHANGING FUNDING PROVISIONS;
RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN
LAWS 2005 BY REPEALING LAWS 2005, CHAPTER 176, SECTION 12;
AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

2 Section 1. Section 9-24-4 NMSA 1978 (being Laws 2004,
3 Chapter 27, Section 4, as amended) is amended to read:

4 "9-24-4. DEPARTMENT CREATED.--

5 A. The "public education department" is created in
6 the executive branch. The department is a cabinet department
7 and includes the following divisions:

8 (1) the administrative services division;

9 (2) the assessment and accountability
10 division;

11 (3) the charter schools division;

12 [~~(3)~~] (4) the educator quality division;

13 [~~(4)~~] (5) the Indian education division;

14 [~~(5)~~] (6) the information technology division;

15 [~~(6)~~] (7) the instructional support and
16 vocational education division;

17 [~~(7)~~] (8) the program support and student
18 transportation division;

19 [~~(8)~~] (9) the quality assurance and systems
20 integration division;

21 [~~(9)~~] (10) the rural education division; and

22 [~~(10)~~] (11) the vocational rehabilitation
23 division.

24 B. The secretary may organize the department and
25 divisions of the department and may transfer or merge functions

1 between divisions and bureaus in the interest of efficiency and
2 economy."

3 Section 2. Section 22-8-2 NMSA 1978 (being Laws 1978,
4 Chapter 128, Section 3, as amended) is amended to read:

5 "22-8-2. DEFINITIONS.--As used in the Public School
6 Finance Act:

7 A. "ADM" or "MEM" means membership;

8 B. "membership" means the total enrollment of
9 qualified students on the current roll of a class or school on
10 a specified day. The current roll is established by the
11 addition of original entries and reentries minus withdrawals.
12 Withdrawals of students, in addition to students formally
13 withdrawn from the public school, include students absent from
14 the public school for as many as ten consecutive school days;
15 provided that withdrawals do not include truants and habitual
16 truants the school district is required to intervene with and
17 keep in an educational setting as provided in Section 22-12-9
18 NMSA 1978;

19 C. "basic program ADM" or "basic program MEM" means
20 the MEM of qualified students but excludes the full-time-
21 equivalent MEM in early childhood education and three- and
22 four-year-old students receiving special education services;

23 D. "cost differential factor" is the numerical
24 expression of the ratio of the cost of a particular segment of
25 the school program to the cost of the basic program in grades

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1 four through six;

2 E. "department" or "division" means the public
3 education department;

4 F. "early childhood education ADM" or "early
5 childhood education MEM" means the full-time-equivalent MEM of
6 students attending approved early childhood education programs;

7 G. "full-time-equivalent ADM" or "full-time-
8 equivalent MEM" is that membership calculated by applying to
9 the MEM in an approved public school program the ratio of the
10 number of hours per school day devoted to the program to six
11 hours or the number of hours per school week devoted to the
12 program to thirty hours;

13 H. "operating budget" means the annual financial
14 plan required to be submitted by a local school board or
15 governing body of a state-chartered charter school;

16 I. "program cost" is the product of the total
17 number of program units to which a school district is entitled
18 multiplied by the dollar value per program unit established by
19 the legislature;

20 J. "program element" is that component of a public
21 school system to which a cost differential factor is applied to
22 determine the number of program units to which a school
23 district is entitled, including but not limited to MEM, full-
24 time-equivalent MEM, teacher, classroom or public school;

25 K. "program unit" is the product of the program

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1 element multiplied by the applicable cost differential factor;

2 L. "public money" or "public funds" means all money
3 from public or private sources received by a [~~local~~] school
4 [~~board~~] district or state-chartered charter school or officer
5 or employee of a [~~local~~] school [~~board~~] district or state-
6 chartered charter school for public use;

7 M. "qualified student" means a public school
8 student who:

9 (1) has not graduated from high school;

10 (2) is regularly enrolled in one-half or more
11 of the minimum course requirements approved by the department
12 for public school students; and

13 (3) is at least five years of age prior to
14 12:01 a.m. on September 1 of the school year; or

15 (4) is at least three years of age at any time
16 during the school year and is receiving special education
17 services pursuant to rules of the department; or

18 (5) has not reached the student's twenty-
19 second birthday on the first day of the school year and is
20 receiving special education services pursuant to rules of the
21 department; and

22 N. "state superintendent" means the secretary of
23 public education or the secretary's designee."

24 Section 3. Section 22-8-6.1 NMSA 1978 (being Laws 1993,
25 Chapter 227, Section 8, as amended) is amended to read:

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1 "22-8-6.1. [~~CERTAIN SCHOOL DISTRICT~~] CHARTER SCHOOL
2 BUDGETS.--

3 A. Each state-chartered charter school shall submit
4 to the [~~local school board~~] charter schools division of the
5 department a school-based budget. For fiscal year 2008, and
6 for the first year of operation in any fiscal year thereafter,
7 the budget of every state-chartered charter school shall be
8 based [~~upon~~] on the projected number of program units generated
9 by that charter school and its students, using the at-risk
10 index and the instructional staff training and experience index
11 of the school district in which it is geographically located.
12 For second and subsequent fiscal years of operation, the
13 budgets of state-chartered charter schools shall be based on
14 the projected number of program units generated by that state-
15 chartered charter school and its students and its instructional
16 staff training and experience index and the at-risk index of
17 the school district in which the state-chartered charter school
18 is geographically located. The budget shall be submitted to
19 the [~~local school board~~] division for approval or amendment
20 pursuant to the Public School Finance Act and the Charter
21 Schools Act.

22 B. Each locally chartered charter school shall
23 submit to the local school board a school-based budget. The
24 budget shall be based on the projected number of program units
25 generated by that charter school and its students, using the

1 at-risk index and the training and experience index of the
 2 school district. The budget shall be submitted to the local
 3 school board for approval or amendment. The approval or
 4 amendment authority of the local school board relative to the
 5 charter school budget is limited to ensuring that sound fiscal
 6 practices are followed in the development of the budget and
 7 that the charter school budget is within the allotted
 8 resources. The local school board shall have no veto authority
 9 over individual line items within the charter school's proposed
 10 budget, but shall approve or disapprove the budget in its
 11 entirety. Upon final approval of the local budget by the local
 12 school board, the individual charter school budget shall be
 13 included separately in the budget submission to the department
 14 [~~of education~~] required pursuant to the Public School Finance
 15 Act and the [~~1999~~] Charter Schools Act."

16 Section 4. Section 22-8-7 NMSA 1978 (being Laws 1967,
 17 Chapter 16, Section 61, as amended) is amended to read:

18 "22-8-7. BUDGETS--FORM.--All budgets submitted to the
 19 department by a school district or state-chartered charter
 20 school shall be in a form specified by the department."

21 Section 5. Section 22-8-11 NMSA 1978 (being Laws 1967,
 22 Chapter 16, Section 66, as amended) is amended to read:

23 "22-8-11. BUDGETS--APPROVAL OF OPERATING BUDGET.--

24 A. The department shall:

25 (1) on or before July 1 of each year, approve

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1 and certify to each local school board and governing body of a
2 state-chartered charter school an operating budget for use by
3 the ~~[local]~~ school ~~[board]~~ district or state-chartered charter
4 school; and

5 (2) make corrections, revisions and amendments
6 to the operating budgets fixed by the local school boards or
7 governing bodies of state-chartered charter schools and the
8 ~~[state superintendent]~~ secretary to conform the budgets to the
9 requirements of law and to the department's rules and
10 procedures.

11 B. No school ~~[board]~~ district or state-chartered
12 charter school or officer or employee of a school district or
13 state-chartered charter school shall make any expenditure or
14 incur any obligation for the expenditure of public funds unless
15 that expenditure or obligation is made in accordance with an
16 operating budget approved by the department. This prohibition
17 does not prohibit the transfer of funds pursuant to the
18 department's rules and procedures.

19 C. The department shall not approve and certify an
20 operating budget of any school district or state-chartered
21 charter school that fails to demonstrate that parental
22 involvement in the budget process was solicited."

23 Section 6. Section 22-8-12 NMSA 1978 (being Laws 1967,
24 Chapter 16, Section 67, as amended) is amended to read:

25 "22-8-12. OPERATING BUDGETS--AMENDMENTS.--Operating

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1 budgets shall not be altered or amended after approval and
2 certification by the department, except for the following
3 purposes and according to the following procedure:

4 A. upon written request of [~~any~~] a local school
5 board or governing body of a state-chartered charter school,
6 the [~~state superintendent~~] secretary may authorize transfer
7 within the budget, or provide for items not included, when the
8 total amount of the budget will not be increased thereby;

9 B. upon written request of [~~any~~] a local school
10 board or governing body of a state-chartered charter school,
11 the [~~state superintendent~~] secretary, in conformance with the
12 rules of the department, may authorize an increase in any
13 budget if the increase is necessary because of the receipt of
14 revenue that was not anticipated at the time the budget was
15 fixed and if the increase is directly related to a special
16 project or program for which the additional revenue was
17 received. The [~~state superintendent~~] secretary shall make a
18 written report to the legislative finance committee of any such
19 budget increase;

20 C. upon written request of [~~any~~] a local school
21 board or governing body of a state-chartered charter school,
22 the [~~state superintendent~~] secretary may authorize an increase
23 in a budget of not more than one thousand dollars (\$1,000); or

24 D. upon written request of [~~any~~] a local school
25 board or governing body of a state-chartered charter school,

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1 the [~~state superintendent~~] secretary, after notice and a public
2 hearing, may authorize an increase in a school budget in an
3 amount exceeding one thousand dollars (\$1,000). The notice of
4 the hearing shall designate the school district [~~which~~] that
5 proposes to alter or amend its budget, together with the time,
6 place and date of the hearing. The notice of the hearing shall
7 be published at least once a week for two consecutive weeks in
8 a newspaper of general circulation in the county in which the
9 school district is situated. The last publication of the
10 notice shall be at least three days prior to the date set for
11 the hearing. The charter schools division shall establish how
12 a state-chartered charter school notifies the parents of its
13 students of proposed increases in a charter school budget."

14 Section 7. Section 22-8-12.1 NMSA 1978 (being Laws 1978,
15 Chapter 128, Section 5, as amended) is amended to read:

16 "22-8-12.1. MEMBERSHIP PROJECTIONS AND BUDGET
17 REQUESTS.--

18 A. Each local school board or governing body of a
19 state-chartered charter school shall submit annually, on or
20 before October 15, to the department:

21 (1) an estimate for the succeeding fiscal year
22 of:

23 (a) the membership of qualified students
24 to be enrolled in the basic program;

25 (b) the full-time-equivalent membership

1 of students to be enrolled in approved early childhood
2 education programs; and

3 (c) the membership of students to be
4 enrolled in approved special education programs;

5 (2) all other information necessary to
6 calculate program costs; and

7 (3) any other information related to the
8 financial needs of the school district or state-chartered
9 charter school as may be requested by the department.

10 B. All information requested pursuant to Subsection
11 A of this section shall be submitted on forms prescribed and
12 furnished by the department and shall comply with the
13 department's rules and procedures.

14 C. The department shall:

15 (1) review the financial needs of each school
16 district or state-chartered charter school for the succeeding
17 fiscal year; and

18 (2) submit annually, on or before November 30,
19 to the secretary of finance and administration the
20 recommendations of the [~~state board~~] department for:

21 (a) amendments to the public school
22 finance formula;

23 (b) appropriations for the succeeding
24 fiscal year to the public school fund for inclusion in the
25 executive budget document; and

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1 (c) appropriations for the succeeding
2 fiscal year for pupil transportation and instructional
3 materials."

4 Section 8. Section 22-8-13 NMSA 1978 (being Laws 1974,
5 Chapter 8, Section 3, as amended) is amended to read:

6 "22-8-13. REPORTS.--

7 A. Each [~~local school board shall require each~~
8 public school in ~~its~~] a school district [~~to~~] and each state-
9 chartered charter school shall keep accurate records concerning
10 membership in the public school. The superintendent of each
11 school district or head administrator of a state-chartered
12 charter school shall maintain the following reports for each
13 twenty-day reporting period:

14 (1) the basic program MEM by grade in each
15 public school;

16 (2) the early childhood education MEM;

17 (3) the special education MEM in each public
18 school in class C and class D programs as defined in Section
19 22-8-21 NMSA 1978;

20 (4) the number of class A and class B programs
21 as defined in Section 22-8-21 NMSA 1978; and

22 (5) the full-time-equivalent MEM for bilingual
23 multicultural education programs.

24 B. The superintendent of each school district and
25 the head administrator of each state-chartered charter school

1 shall furnish to the department reports of the information
2 required in Paragraphs (1) through (5) of Subsection A of this
3 section for the first forty days of the school year. The
4 forty-day report and all other reports required by law or by
5 the ~~[state board]~~ department shall be furnished within five
6 days of the close of the reporting period.

7 C. All information required pursuant to this
8 section shall be on forms prescribed and furnished by the
9 department. A copy of any report made pursuant to this section
10 shall be kept as a permanent record of the school district or
11 charter school and shall be subject to inspection and audit at
12 any reasonable time.

13 D. The department shall withhold allotments of
14 funds to any school district or state-chartered charter school
15 where the superintendent or head administrator has failed to
16 comply until the superintendent or head administrator complies
17 with and agrees to continue complying with requirements of this
18 section.

19 E. The provisions of this section may be modified
20 or suspended by the department for any school district or
21 school or state-chartered charter school operating under the
22 Variable School Calendar Act. The department shall require MEM
23 reports consistent with the calendar of operations of such
24 school district or school or state-chartered charter school and
25 shall calculate an equivalent MEM for use in projecting school

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1 district revenue."

2 Section 9. Section 22-8-14 NMSA 1978 (being Laws 1967,
3 Chapter 16, Section 69, as amended) is amended to read:

4 "22-8-14. PUBLIC SCHOOL FUND.--

5 A. The "public school fund" is created.

6 B. [~~This~~] The public school fund shall be
7 distributed to school districts and state-chartered charter
8 schools in the following parts:

9 (1) state equalization guarantee distribution;

10 (2) transportation distribution; and

11 (3) supplemental distributions:

12 (a) out-of-state tuition to school
13 districts;

14 (b) emergency; and

15 (c) program enrichment.

16 C. The distributions of the public school fund
17 shall be made by the department within limits established by
18 law. The balance remaining in the public school fund at the
19 end of each fiscal year shall revert to the general fund,
20 unless otherwise provided by law."

21 Section 10. Section 22-8-15 NMSA 1978 (being Laws 1967,
22 Chapter 16, Section 70, as amended) is amended to read:

23 "22-8-15. ALLOCATION LIMITATION.--

24 A. The department shall determine the allocations
25 to each school district and state-chartered charter school from

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1 each of the distributions of the public school fund, subject to
2 the limits established by law.

3 B. The local school board in each school district
4 with ~~[authorized]~~ locally chartered charter schools shall
5 allocate the appropriate distributions of the public school
6 fund to individual locally chartered charter schools pursuant
7 to each locally chartered charter school's school-based budget
8 approved by the local school board and the department. The
9 appropriate distribution of the public school fund shall flow
10 to the locally chartered charter school within five days after
11 the school district's receipt of the state equalization
12 guarantee for that month."

13 Section 11. Section 22-8-17 NMSA 1978 (being Laws 1974,
14 Chapter 8, Section 7, as amended) is amended to read:

15 "22-8-17. PROGRAM COST DETERMINATION--REQUIRED
16 INFORMATION.--

17 A. The program cost for each school district and
18 state-chartered charter school shall be determined by the
19 department in accordance with the provisions of the Public
20 School Finance Act.

21 B. The department is authorized to require from
22 each school district and state-chartered charter school the
23 information necessary to make an accurate determination of the
24 district's or state-chartered charter school's program cost."

25 Section 12. Section 22-8-18 NMSA 1978 (being Laws 1974,

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1 Chapter 8, Section 8, as amended) is amended to read:

2 "22-8-18. PROGRAM COST CALCULATION--LOCAL [~~SCHOOL BOARD~~]
3 RESPONSIBILITY.--

4 A. The total program units for the purpose of
5 computing the program cost shall be calculated by multiplying
6 the sum of the program units itemized as Paragraphs (1) through
7 (5) in this subsection by the instructional staff training and
8 experience index and adding the program units itemized as
9 Paragraphs (6) through (10) in this subsection. The itemized
10 program units are as follows:

- 11 (1) early childhood education;
- 12 (2) basic education;
- 13 (3) special education, adjusted by subtracting
14 the units derived from membership in class D special education
15 programs in private, nonsectarian, nonprofit training centers;
- 16 (4) bilingual multicultural education;
- 17 (5) fine arts education;
- 18 (6) size adjustment;
- 19 (7) at-risk program;
- 20 (8) enrollment growth or new district
21 adjustment;
- 22 (9) special education units derived from
23 membership in class D special education programs in private,
24 nonsectarian, nonprofit training centers; and
- 25 (10) national board for professional teaching

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1 standards certification.

2 B. The total program cost calculated as prescribed
 3 in Subsection A of this section includes the cost of early
 4 childhood, special, bilingual multicultural, fine arts and
 5 vocational education and other remedial or enrichment programs.
 6 It is the responsibility of the local school board or governing
 7 body of a state-chartered charter school to determine its
 8 priorities in terms of the needs of the community served by
 9 that board. Funds generated under the Public School Finance
 10 Act are discretionary to local school boards and governing
 11 bodies of state-chartered charter schools, provided that the
 12 special program needs as enumerated in this section are met."

13 Section 13. Section 22-8-23.1 NMSA 1978 (being Laws 1990
 14 (1st S.S.), Chapter 3, Section 7, as amended by Laws 2003,
 15 Chapter 156, Section 1 and by Laws 2003, Chapter 386, Section
 16 1) is amended to read:

17 "22-8-23.1. ENROLLMENT GROWTH PROGRAM UNITS.--

18 A. A school district or state-chartered charter
 19 school with an increase in MEM equal to or greater than one
 20 percent, when compared with the immediately preceding year, is
 21 eligible for additional program units. The increase in MEM
 22 shall be calculated as follows:

23 (Current Year MEM - Previous Year MEM)

24 Previous Year MEM X 100 = Percent Increase.

25 The number of additional program units shall be calculated as

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1 follows:

2 ((Current Year MEM - Previous Year MEM) - (Current Year
3 MEM x .01)) X 1.5 = Units.

4 B. In addition to the units calculated in
5 Subsection A of this section, a school district or charter
6 school with an increase in MEM equal to or greater than one
7 percent, when compared with the immediately preceding year, is
8 eligible for additional program units. The increase in MEM
9 shall be calculated in the following manner:

10 (Current Year MEM - Previous Year MEM)

11 Previous Year MEM X 100 = Percent Increase.

12 The number of additional program units to which an eligible
13 school district or charter school is entitled under this
14 subsection is the number of units computed in the following
15 manner:

16 (Current Year MEM - Previous Year MEM) X .50 = Units.

17 C. As used in this section:

18 (1) "current year MEM" means MEM on the
19 fortieth day of the current year;

20 (2) "MEM" means the total school district or
21 state-chartered charter school membership, including early
22 childhood education full-time-equivalent membership and special
23 education membership, but excluding full-day kindergarten
24 membership for the first year that full-day kindergarten is
25 implemented in a school pursuant to Subsection D of Section

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1 ~~[22-2-19]~~ 22-13-3.2 NMSA 1978; and

2 (3) "previous year MEM" means MEM on the
3 fortieth day of the previous year."

4 Section 14. Section 22-8-23.4 NMSA 1978 (being Laws 2003,
5 Chapter 144, Section 2 and Laws 2003, Chapter 152, Section 9)
6 is amended to read:

7 "22-8-23.4. NATIONAL BOARD FOR PROFESSIONAL TEACHING
8 STANDARDS--CERTIFIED TEACHERS PROGRAM UNITS.--The number of
9 program units for teachers certified by the national board for
10 professional teaching standards is determined by multiplying by
11 one and one-half the number of teachers certified by the
12 national board for professional teaching standards employed by
13 the school district or state-chartered charter school on or
14 before the fortieth day of the school year and verified by the
15 department. Department approval of these units shall be
16 contingent on verification by the school district or state-
17 chartered charter school that these teachers are receiving a
18 one-time salary differential equal to or greater than the
19 amount generated by the units multiplied by the program unit
20 value during the fiscal year in which the school district or
21 state-chartered charter school will receive these units."

22 Section 15. A new section of the Public School Finance
23 Act is enacted to read:

24 "[NEW MATERIAL] CHARTER SCHOOL STUDENT ACTIVITIES PROGRAM
25 UNIT.--The charter school student activities program unit for a
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1 school district is determined by multiplying the number of
2 charter school students who are participating in school
3 district activities governed by the New Mexico activities
4 association by the cost differential factor of 0.1. The
5 student activities program unit shall be paid to the school
6 district in which it is generated."

7 Section 16. Section 22-8-25 NMSA 1978 (being Laws 1981,
8 Chapter 176, Section 5, as amended by Laws 2005, Chapter 176,
9 Section 12 and by Laws 2005, Chapter 291, Section 1) is amended
10 to read:

11 "22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--
12 DEFINITIONS--DETERMINATION OF AMOUNT.--

13 A. The state equalization guarantee distribution is
14 that amount of money distributed to each school district to
15 ensure that ~~[the school district's]~~ its operating revenue,
16 including its local and federal revenues as defined in this
17 section, is at least equal to the school district's program
18 cost. For state-chartered charter schools, the state
19 equalization guarantee distribution is the difference between
20 the state-chartered charter school's program cost and the two
21 percent withheld by the department for administrative services.

22 B. "Local revenue", as used in this section, means
23 seventy-five percent of receipts to the school district derived
24 from that amount produced by a school district property tax
25 applied at the rate of fifty cents (\$.50) to each one thousand

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1 dollars (\$1,000) of net taxable value of property allocated to
2 the school district and to the assessed value of products
3 severed and sold in the school district as determined under the
4 Oil and Gas Ad Valorem Production Tax Act and upon the assessed
5 value of equipment in the school district as determined under
6 the Oil and Gas Production Equipment Ad Valorem Tax Act.

7 C. "Federal revenue", as used in this section,
8 means receipts to the school district, excluding amounts that,
9 if taken into account in the computation of the state
10 equalization guarantee distribution, result, under federal law
11 or regulations, in a reduction in or elimination of federal
12 school funding otherwise receivable by the school district,
13 derived from the following:

14 (1) seventy-five percent of the school
15 district's share of forest reserve funds distributed in
16 accordance with Section 22-8-33 NMSA 1978; and

17 (2) seventy-five percent of grants from the
18 federal government as assistance to those areas affected by
19 federal activity authorized in accordance with Title 20 of the
20 United States Code, commonly known as "PL 874 funds" or "impact
21 aid".

22 D. To determine the amount of the state
23 equalization guarantee distribution, the department shall:

24 (1) calculate the number of program units to
25 which each school district or state-chartered charter school is

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1 entitled using an average of the MEM on the eightieth and one
2 hundred twentieth days of the prior year; or

3 (2) calculate the number of program units to
4 which a school district or state-chartered charter school
5 operating under an approved year-round school calendar is
6 entitled using an average of the MEM on appropriate dates
7 established by the department; or

8 (3) calculate the number of program units to
9 which a school district or state-chartered charter school with
10 a MEM of two hundred or less is entitled by using an average of
11 the MEM on the eightieth and one hundred twentieth days of the
12 prior year or the fortieth day of the current year, whichever
13 is greater; and

14 (4) using the results of the calculations in
15 Paragraph (1), (2) or (3) of this subsection and the
16 instructional staff training and experience index from the
17 October report of the prior school year, establish a total
18 program cost of the school district or state-chartered charter
19 school;

20 (5) for school districts, calculate the local
21 and federal revenues as defined in this section;

22 (6) deduct the sum of the calculations made in
23 Paragraph (5) of this subsection from the program cost
24 established in Paragraph (4) of this subsection;

25 (7) deduct the total amount of guaranteed

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1 energy savings contract payments that the department determines
2 will be made to the school district from the public school
3 utility conservation fund during the fiscal year for which the
4 state equalization guarantee distribution is being computed;
5 and

6 (8) deduct ninety percent of the amount
7 certified for the school district by the department pursuant to
8 the Energy Efficiency and Renewable Energy Bonding Act [~~if that~~
9 ~~act becomes law pursuant to House Bill 32 or similar~~
10 ~~legislation of the first session of the forty-seventh~~
11 ~~legislature~~].

12 E. Reduction of a school district's state
13 equalization guarantee distribution shall cease when the school
14 district's cumulative reductions equal its proportional share
15 of the cumulative debt service payments necessary to service
16 the bonds issued pursuant to the Energy Efficiency and
17 Renewable Energy Bonding Act [~~if that act becomes law pursuant~~
18 ~~to House Bill 32 or similar legislation of the first session of~~
19 ~~the forty-seventh legislature~~].

20 F. The amount of the state equalization guarantee
21 distribution to which a school district is entitled is the
22 balance remaining after the deductions made in Paragraphs (6)
23 through (8) of Subsection D of this section.

24 G. The state equalization guarantee distribution
25 shall be distributed prior to June 30 of each fiscal year. The

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1 calculation shall be based on the local and federal revenues
2 specified in this section received from June 1 of the previous
3 fiscal year through May 31 of the fiscal year for which the
4 state equalization guarantee distribution is being computed.
5 In the event that a school district or charter school has
6 received more state equalization guarantee funds than its
7 entitlement, a refund shall be made by the school district or
8 charter school to the state general fund."

9 Section 17. Section 22-8-26 NMSA 1978 (being Laws 1967,
10 Chapter 16, Section 76, as amended) is amended to read:

11 "22-8-26. TRANSPORTATION DISTRIBUTION.--

12 A. Money in the transportation distribution of the
13 public school fund shall be used only for the purpose of making
14 payments to each school district or state-chartered charter
15 school for the to-and-from school transportation costs of
16 students in grades kindergarten through twelve attending public
17 school within the school district or state-chartered charter
18 school and of three- and four-year-old children who meet the
19 [~~state board~~] department approved criteria and definition of
20 developmentally disabled and for transportation of students to
21 and from their regular attendance centers and the place where
22 vocational education programs are being offered.

23 B. In the event a school district's or state-
24 chartered charter school's transportation allocation exceeds
25 the amount required to meet obligations to provide to-and-from

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1 transportation, three- and four-year-old developmentally
 2 disabled transportation and vocational education
 3 transportation, fifty percent of the remaining balance shall be
 4 deposited in the transportation emergency fund.

5 C. Of the excess amount retained by the school
 6 district or state-chartered charter school, at least twenty-
 7 five percent shall be used for to-and-from transportation-
 8 related services, excluding salaries and benefits, and up to
 9 twenty-five percent may be used for other transportation-
 10 related services, excluding salaries and benefits as defined by
 11 rule of the department.

12 D. In the event the sum of the proposed
 13 transportation allocations to each school district or state-
 14 chartered charter school exceeds the amounts in the
 15 transportation distribution, the allocation to each school
 16 district or state-chartered charter school shall be reduced in
 17 the proportion that the [~~local~~] school district or state-
 18 chartered charter school allocation bears to the total
 19 statewide transportation distribution.

20 E. A local school [~~boards~~] board or governing body
 21 of a state-chartered charter school, with the approval of the
 22 state transportation director, may provide additional
 23 transportation services pursuant to Section 22-16-4 NMSA 1978
 24 to meet established program needs.

25 F. Nothing in this section prohibits the use of

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1 school buses to transport the general public pursuant to the
2 Emergency Transportation Act."

3 Section 18. Section 22-8-27 NMSA 1978 (being Laws 1967,
4 Chapter 16, Section 77, as amended) is amended to read:

5 "22-8-27. TRANSPORTATION EQUIPMENT.--

6 A. The [~~state superintendent~~] department shall
7 establish a systematic program for the purchase of necessary
8 school bus transportation equipment.

9 B. In establishing a system for the replacement of
10 school-district-owned buses, the [~~state superintendent~~]
11 department shall provide for the replacement of school buses on
12 a twelve-year cycle. School districts requiring additional
13 buses to accommodate growth in the school district or to meet
14 other special needs may petition the [~~state superintendent~~]
15 department for additional buses. Under exceptional
16 circumstances, school districts may also petition the [~~state~~
17 ~~superintendent~~] department for permission to replace buses
18 prior to the completion of a twelve-year cycle or to [~~utilize~~]
19 use buses in excess of twelve years contingent upon
20 satisfactory annual safety inspections.

21 C. In establishing a system for the [~~utilization~~]
22 use of contractor-owned buses by school districts or state-
23 chartered charter schools, the [~~state superintendent~~]
24 department shall establish a schedule for the payment of rental
25 fees for the use of contractor-owned buses. [~~As with school-~~

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1 ~~district-owned operations~~] The [~~state superintendent~~
2 department] shall establish procedures to ensure the systematic
3 replacement of buses on a twelve-year replacement cycle.
4 School districts and state-chartered charter schools requiring
5 additional buses to accommodate growth in the school district
6 or state-chartered charter school or to meet other special
7 needs may petition the [~~state superintendent~~] department for
8 additional buses. Under exceptional circumstances, school
9 districts or state-chartered charter schools may also petition
10 the [~~state superintendent~~] department for permission to replace
11 buses prior to the completion of a twelve-year cycle or to
12 [~~utilize~~] use buses in excess of twelve years contingent upon
13 satisfactory annual safety inspections. [~~Effective with the~~
14 ~~1995-96 school year~~] No school district or state-chartered
15 charter school shall pay rental fees for any one bus for a
16 period in excess of five years. In the event a school bus
17 service contract is terminated, the [~~state superintendent~~]
18 department shall calculate the remaining number of years that a
19 bus could be used based on a twelve-year replacement cycle and
20 calculate a value reflecting that use. The [~~local~~] school
21 district or state-chartered charter school shall deduct an
22 amount equal to that value from any remaining amount due on the
23 contract or if no balance remains on the contract, the
24 contractor shall reimburse the school district or state-
25 chartered charter school an amount equal to the value

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1 calculated."

2 Section 19. Section 22-8-29 NMSA 1978 (being Laws 1967,
3 Chapter 16, Section 78, as amended) is amended to read:

4 "22-8-29. TRANSPORTATION DISTRIBUTIONS--REPORTS--
5 PAYMENTS.--

6 A. Prior to November 15 of each year, each local
7 school board of a school district and governing body of a
8 state-chartered charter school shall report to the state
9 transportation director, upon forms furnished by the state
10 transportation director, the following information concerning
11 the school district's or state-chartered charter school's
12 operation on the fortieth day of school:

13 (1) the number and designation of school bus
14 routes in operation in the school district;

15 (2) the number of miles traveled by each
16 school bus on each school bus route, showing the route mileage
17 in accordance with the type of road surface traveled;

18 (3) the number of students transported on the
19 fortieth day of school and adjusted for special education
20 students on December 1;

21 (4) the projected number of students to be
22 transported in the next school year;

23 (5) the seating capacity, age and mileage of
24 each bus used in the school district for student
25 transportation; and

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1 (6) the number of total miles traveled for
2 each school district's or state-chartered charter school's per
3 capita feeder routes.

4 B. Each local school board of a school district and
5 governing body of a state-chartered charter school maintaining
6 a school bus route shall make further reports to the state
7 transportation director at other times specified by the state
8 transportation director.

9 C. The state transportation director shall certify
10 to the [~~state superintendent~~] secretary that the allocations
11 from the transportation distributions to each school district
12 and state-chartered charter school are based upon the
13 transportation distribution formula established in the Public
14 School Code. The allocations for the first six months of a
15 school year shall be based upon the tentative transportation
16 budget of the school district or state-chartered charter school
17 for the current fiscal year. Allocations to a school district
18 or state-chartered charter school for the remainder of the
19 school year shall adjust the amount received by the school
20 district or state-chartered charter school so that it equals
21 the amount the school district or state-chartered charter
22 school is entitled to receive for the entire school year based
23 upon the November 15 report and subject to audit and
24 verification.

25 D. The department shall make periodic installment

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1 payments to school districts and state-chartered charter
2 schools during the school year from the transportation
3 distributions, based upon the allocations certified by the
4 state transportation director."

5 Section 20. Section 22-8-29.1 NMSA 1978 (being Laws 1995,
6 Chapter 208, Section 10, as amended) is amended to read:

7 "22-8-29.1. CALCULATION OF TRANSPORTATION ALLOCATION.--

8 A. As used in this section:

9 (1) "annual variables" means the coefficients
10 calculated by regressing the total operational expenditures
11 from two years prior to the current school year for each school
12 district and state-chartered charter school using the number of
13 students transported and the numerical value of site
14 characteristics;

15 (2) "base amount" means the fixed amount that
16 is the same for all school districts and an amount established
17 by rule for state-chartered charter schools;

18 (3) "total operational expenditures" means the
19 sum of all to-and-from school transportation expenditures,
20 excluding expenditures incurred in accordance with the
21 provisions of Section 22-8-27 NMSA 1978; and

22 (4) "variable amount" means the sum of the
23 product of the annual variables multiplied by each school
24 district's or state-chartered charter school's numerical value
25 of the school district's and state-chartered charter school's

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1 site characteristics multiplied by the number of days of
2 operation for each school district or state-chartered charter
3 school.

4 B. The department shall calculate the
5 transportation allocation for each school district and state-
6 chartered charter school.

7 C. The base amount is designated as product A.
8 Product A is the constant calculated by regressing the total
9 operations expenditures from the two years prior to the current
10 school year for school district or state-chartered charter
11 school operations using the numerical value of site
12 characteristics approved by the [~~state board~~] department. The
13 legislative education study committee and the legislative
14 finance committee may review the site characteristics developed
15 by the state transportation director prior to approval by the
16 [~~state board~~] department.

17 D. The variable amount is designated as product B.
18 Product B is the predicted additional expenditures for each
19 school district or state-chartered charter school based on the
20 regression analysis using the site characteristics as predictor
21 variables multiplied by the number of days.

22 E. The allocation to each school district and
23 state-chartered charter school shall be equal to product A plus
24 product B.

25 F. For the 2001-2002, 2002-2003 and 2003-2004

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1 school years, the transportation allocation for each school
2 district shall not be less than ninety-five percent or more
3 than one hundred five percent of the prior school year's
4 transportation expenditure.

5 G. The adjustment factor shall be applied to the
6 allocation amount determined pursuant to Subsections E and F of
7 this section."

8 Section 21. Section 22-8-29.4 NMSA 1978 (being Laws 1995,
9 Chapter 208, Section 13, as amended) is amended to read:

10 "22-8-29.4. TRANSPORTATION DISTRIBUTION ADJUSTMENT
11 FACTOR.--

12 A. The [~~state superintendent~~] department shall
13 establish a transportation distribution adjustment factor. The
14 adjustment factor shall be calculated as follows:

15 (1) calculate the unadjusted transportation
16 allocation for each school district [~~previously~~] and state-
17 chartered charter school, designated in Section 22-8-29.1 NMSA
18 1978 as product A plus product B;

19 (2) the sum total of product A plus product B
20 in all school districts and state-chartered charter schools
21 added together equals product C; and

22 (3) subtract product C from the total
23 operational transportation distribution for the current year
24 and divide the result by product C and then add 1 in the
25 following manner:

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1 "[(total operational transportation distribution - C) ÷ C] +
 2 1". The result is the transportation distribution adjustment
 3 factor.

4 B. As used in this section, "total operational
 5 transportation distribution" means the total legislative
 6 appropriation for the transportation distribution minus amounts
 7 included for capital outlay expenses."

8 Section 22. Section 22-8-30 NMSA 1978 (being Laws 1974,
 9 Chapter 8, Section 17, as amended) is amended to read:

10 "22-8-30. SUPPLEMENTAL DISTRIBUTIONS.--

11 A. The [~~state superintendent~~] department shall make
 12 supplemental distributions only for the following purposes:

13 (1) to pay the out-of-state tuition of
 14 students subject to the Compulsory School Attendance Law who
 15 are attending school out-of-state because school facilities are
 16 not reasonably available in the school district of their
 17 residence;

18 (2) to make emergency distributions to school
 19 districts or state-chartered charter schools in financial need,
 20 but no money shall be distributed to any school district or
 21 state-chartered charter school having cash and invested
 22 reserves, or other resources or any combination thereof,
 23 equaling five percent or more of the school district's or
 24 state-chartered charter school's operational budget;

25 (3) to make program enrichment distributions

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1 in the amount of actual program expense to school districts and
2 state-chartered charter schools for the purpose of providing
3 specific programs to meet particular educational requirements
4 that cannot otherwise be financed;

5 (4) a special vocational education
6 distribution to area vocational schools or state-supported
7 schools with [~~state board~~] department-approved vocational
8 programs to reimburse those schools for the cost of vocational
9 education programs for those students subject to the Compulsory
10 School Attendance Law who are enrolled in such programs; and

11 (5) to make emergency capital outlay
12 distributions to school districts or state-chartered charter
13 schools that have experienced an unexpected capital outlay
14 emergency demanding immediate attention.

15 B. The [~~state superintendent~~] department shall
16 account for all supplemental distributions and shall make full
17 reports to the governor, legislative education study committee
18 and legislative finance committee of payments made as
19 authorized in Subsection A of this section.

20 C. The [~~state superintendent~~] department may divert
21 any unused or unneeded balances in any of the distributions
22 made under the supplementary distribution authority to make any
23 other distribution made pursuant to the same authority."

24 Section 23. Section 22-8-38 NMSA 1978 (being Laws 1967,
25 Chapter 16, Section 96, as amended) is amended to read:

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1 "22-8-38. BOARDS OF FINANCE--DESIGNATION.--

2 A. Upon written application to and approval of the
3 [~~state superintendent, any~~] department, a local school board
4 may be designated a board of finance for public school funds of
5 the school district. [~~Any~~] A local school board designated as
6 a board of finance may require all funds distributed to,
7 allocated to or collected for the school district or the public
8 schools under its jurisdiction to be deposited with it. The
9 [~~state superintendent~~] department shall designate a local
10 school board as a board of finance if:

11 [~~A.-~~] (1) the local school board shows to the
12 satisfaction of the [~~state superintendent~~] department that it
13 has personnel properly trained to keep accurate and complete
14 fiscal records;

15 [~~B.-~~] (2) the local school board agrees to
16 consult with the [~~state superintendent~~] department on any
17 matters not covered by the manual of accounting and budgeting
18 before taking any action relating to funds held by it as a
19 board of finance;

20 [~~C.-~~] (3) the persons handling these funds are
21 adequately bonded to protect the funds entrusted to them from
22 loss; and

23 [~~D.-~~] (4) the local school board making
24 application has not been suspended and not reinstated as a
25 board of finance within the past year.

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1 B. A charter school applicant requesting a charter
2 from the commission shall submit a plan detailing how its
3 governing body will qualify for designation as a board of
4 finance for public school funds of the charter school. The
5 governing body of a proposed state-chartered charter school
6 shall qualify as a board of finance before the first year of
7 operation of the charter school. The governing body of a
8 state-chartered charter school designated as a board of finance
9 may require all funds distributed to, allocated to or collected
10 for the state-chartered charter school to be deposited with the
11 governing body. The commission shall designate the governing
12 body of a state-chartered charter school as a board of finance
13 if:

14 (1) the governing body shows to the
15 satisfaction of the commission that it has personnel properly
16 trained to keep accurate and complete fiscal records;

17 (2) the governing body agrees to consult with
18 the division on any matters not covered by the manual of
19 accounting and budgeting before taking any action relating to
20 funds held by it as a board of finance;

21 (3) the persons handling these funds are
22 adequately bonded to protect the funds entrusted to them from
23 loss; and

24 (4) the governing body was not a governing
25 body of a charter school or does not have a member who was a

1 member of a governing body of a charter school that was
 2 suspended and not reinstated as a board of finance.

3 C. Failure of the governing body of a proposed
 4 state-chartered charter school to qualify for designation as a
 5 board of finance constitutes good and just grounds for denial,
 6 nonrenewal or revocation of its charter."

7 Section 24. Section 22-8-39 NMSA 1978 (being Laws 1967,
 8 Chapter 16, Section 97, as amended) is amended to read:

9 "22-8-39. BOARDS OF FINANCE--SUSPENSION.--The [~~state~~
 10 ~~superintendent~~] department may at any time suspend a local
 11 school board or governing body of a state-chartered charter
 12 school from acting as a board of finance if [~~he~~] the department
 13 reasonably believes there is mismanagement, improper recording
 14 or improper reporting of public school funds under [~~its~~] the
 15 local school board's or governing body of a state-chartered
 16 charter school's control. When a local school board or
 17 governing body of a state-chartered charter school is suspended
 18 from acting as a board of finance, the [~~state superintendent~~]
 19 department shall:

20 A. immediately take control of all public school
 21 funds under the control of the local school board or governing
 22 body of a state-chartered charter school acting as a board of
 23 finance;

24 B. immediately have an audit made of all funds
 25 under the control of the local school board or governing body

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1 of a state-chartered charter school acting as a board of
2 finance and charge the cost of the audit to the school district
3 or state-chartered charter school;

4 C. act as a fiscal agent for the school district or
5 state-chartered charter school and take any action necessary to
6 conform the fiscal management of funds of the school district
7 or state-chartered charter school to the requirements of law
8 and good accounting practices;

9 D. report any violations of the law to the proper
10 law enforcement officers;

11 E. act as fiscal agent for the school district or
12 state-chartered charter school until [~~he~~] the department
13 determines that the local school board or governing body of a
14 state-chartered charter school is capable of acting as a board
15 of finance or until [~~he~~] the department determines that the
16 county treasurer should act as fiscal agent for the school
17 district [~~and~~] or state-chartered charter school;

18 F. inform the local school board or governing body
19 of a state-chartered charter school in writing of [~~his~~] the
20 department's determination as to who is to act as board of
21 finance or fiscal agent for the school district or state-
22 chartered charter school and also inform the county treasurer
23 in writing if [~~he~~] it determines that the county treasurer
24 should act as fiscal agent for the school district or state-
25 chartered charter school; and

1 G. consider commencing proceedings before the
 2 commission to suspend, revoke or refuse to renew the charter of
 3 the state-chartered charter school in the case of a state-
 4 chartered charter school that has engaged in serious or
 5 repeated mismanagement, improper recording or improper
 6 reporting of public school funds under its control."

7 Section 25. Section 22-8-40 NMSA 1978 (being Laws 1977,
 8 Chapter 136, Section 2, as amended) is amended to read:

9 "22-8-40. DEPOSIT OF PUBLIC SCHOOL FUNDS--DISTRIBUTION--
 10 INTEREST.--

11 A. All public money in the custody of [~~local school~~
 12 ~~boards which~~] school districts or state-chartered charter
 13 schools that have been designated as boards of finance shall be
 14 deposited in qualified depositories in accordance with the
 15 terms of this section.

16 B. Deposits of funds of the [~~local~~] school district
 17 or state-chartered charter school may be made in noninterest-
 18 bearing checking accounts in one or more banks, savings and
 19 loan associations or credit unions, as long as the credit union
 20 deposits are insured by an agency of the United States, located
 21 within the geographical limits of the school district.

22 C. Deposits of funds of the [~~local~~] school district
 23 or state-chartered charter school may be made in interest-
 24 bearing checking accounts, commonly known as "NOW" accounts, in
 25 one or more banks, savings and loan associations or credit

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1 unions, as long as the credit union deposits are insured by an
2 agency of the United States, located within the geographical
3 limits of the school district.

4 D. Public money placed in interest-bearing
5 deposits, in banks and savings and loan associations, other
6 than interest-bearing checking accounts as defined in
7 Subsection C of this section, shall be equitably distributed
8 among all banks and savings and loan associations having their
9 main or manned branch offices within the geographical
10 boundaries of the [~~local~~] school district [~~which~~] that have
11 qualified as public depositories by reason of insurance of the
12 account by an agency of the United States or by depositing
13 collateral security or by giving bond as provided by law in the
14 proportion that each such bank's or savings and loan
15 association's net worth bears to the total net worth of all
16 banks and savings and loan associations having their main
17 office or a manned branch office within the geographical
18 boundaries of the school district. The net worth of the main
19 office of a savings and loan association and its manned branch
20 offices within the geographical boundaries of a school district
21 is the total net worth of the association multiplied by the
22 percentage that deposits of the main office and the manned
23 branch offices located within the geographical boundaries of
24 the school district are of the total deposits of the
25 association. The net worth of each manned branch office or

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underscored material = new
[bracketed material] = delete

1 aggregate of manned branch offices of a savings and loan
2 association located outside the geographical boundaries of the
3 school district in which the main office is located is the
4 total net worth of the association multiplied by the percentage
5 that deposits of the branch or aggregate of branches located
6 outside the geographical boundaries of the school district in
7 which the main office is located are of the total deposits of
8 the association. The director of the financial institutions
9 division of the regulation and licensing department shall
10 promulgate a formula for determining the net worth of banks'
11 main offices and branches for the purposes of distribution of
12 public money as provided for by this section. "Net worth"
13 means assets less liabilities as reported by such banks and
14 savings and loan associations on their most recent semiannual
15 reports to the state or federal supervisory authority having
16 jurisdiction.

17 E. Notwithstanding the provisions of Subsection D
18 of this section, public money may be placed in interest-bearing
19 deposits, other than interest-bearing checking accounts as
20 defined in Subsection C of this section, at the discretion of
21 the board of finance, in credit unions having their main or
22 manned branch offices within the geographical boundaries of the
23 [~~local~~] school district to the extent such deposits are insured
24 by an agency of the United States.

25 F. The rate of interest for all public money

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1 deposited in interest-bearing accounts in banks, savings and
2 loan associations and credit unions shall be set by the state
3 board of finance, but in no case shall the rate of interest be
4 less than one hundred percent of the asked price on United
5 States treasury bills of the same maturity on the date of
6 deposit. Any bank or savings and loan association that fails
7 to pay the minimum rate of interest at the time of deposit
8 provided for herein for any respective deposit forfeits its
9 right to an equitable share of that deposit under this section.
10 If the deposit is part or all of the proceeds of a bond issue
11 and the interest rate prescribed in this subsection materially
12 exceeds the rate of interest of the bonds, the interest rate
13 prescribed by this subsection shall be reduced on the deposit
14 to an amount not materially exceeding the interest rate of the
15 bonds if the bond issue would lose its tax exempt status under
16 Section 103 of the United States Internal Revenue Code of 1954,
17 as amended.

18 G. Public money in excess of that for which banks
19 and savings and loan associations within the geographical
20 boundaries of the [~~lea~~] school district have qualified may be
21 deposited in qualified depositories, including credit unions,
22 in other areas within the state under the same requirements for
23 payment of interest as if the money were deposited within the
24 geographical boundaries of the [~~lea~~] school district.

25 H. The board of finance of the school district or

1 state-chartered charter school may temporarily invest money
 2 held in demand deposits and not immediately needed for the
 3 operation of the school district or state-chartered charter
 4 school. Such temporary investments shall be made only in
 5 securities [~~which~~] that are issued by the state or by the
 6 United States government, or by their departments or agencies,
 7 and [~~which~~] that are either direct obligations of the state or
 8 the United States or are backed by the full faith and credit of
 9 those governments.

10 I. The department of finance and administration may
 11 monitor the deposits of public money by [~~local school boards~~]
 12 school districts or state-chartered charter schools to assure
 13 full compliance with the provisions of this section."

14 Section 26. Section 22-8B-1 NMSA 1978 (being Laws 1999,
 15 Chapter 281, Section 1, as amended) is amended to read:

16 "22-8B-1. SHORT TITLE.--Chapter 22, Article 8B NMSA 1978
 17 may be cited as the "[~~1999~~] Charter Schools Act".

18 Section 27. Section 22-8B-2 NMSA 1978 (being Laws 1999,
 19 Chapter 281, Section 2) is amended to read:

20 "22-8B-2. DEFINITIONS.--As used in the [~~1999~~] Charter
 21 Schools Act:

22 A. "charter school" means a conversion school or
 23 start-up school [~~within a school district authorized by the~~
 24 ~~local school board to operate as a charter school~~] authorized
 25 by the chartering authority to operate as a public school;

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1 B. "chartering authority" means either a local
2 school board or the commission;

3 C. "commission" means the public education
4 commission;

5 [~~B.~~] D. "conversion school" means an existing
6 public school within a school district that was authorized by
7 [~~the~~] a local school board to become a charter school prior to
8 July 1, 2007;

9 E. "division" means the charter schools division of
10 the department;

11 [~~E.~~] F. "governing body" means the governing
12 structure of a charter school as set forth in the school's
13 charter; and

14 [~~D.~~] G. "start-up school" means a public school
15 developed by one or more parents, teachers or community members
16 authorized by the [~~local school board of the school district in~~
17 ~~which the school is located~~] chartering authority to become a
18 charter school."

19 Section 28. Section 22-8B-3 NMSA 1978 (being Laws 1999,
20 Chapter 281, Section 3) is amended to read:

21 "22-8B-3. PURPOSE.--The [~~1999~~] Charter Schools Act is
22 enacted to enable individual schools to [~~restructure~~] structure
23 their educational curriculum to encourage the use of different
24 and innovative teaching methods that are based on reliable
25 research and effective practices or have been replicated

1 successfully in schools with diverse characteristics; to allow
 2 the development of different and innovative forms of measuring
 3 student learning and achievement; to address the needs of all
 4 students, including those determined to be at risk; to create
 5 new professional opportunities for teachers, including the
 6 opportunity to be responsible for the learning program at the
 7 school site; to improve student achievement; to provide parents
 8 and students with an educational alternative to create new,
 9 innovative and more flexible ways of educating children within
 10 the public school system; to encourage parental and community
 11 involvement in the public school system; to develop and use
 12 site-based budgeting; and to hold charter schools accountable
 13 for meeting [~~state board minimum~~] the department's educational
 14 standards and fiscal requirements."

15 Section 29. A new section of the Charter Schools Act is
 16 enacted to read:

17 "[NEW MATERIAL] PUBLIC EDUCATION COMMISSION--POWERS AND
 18 DUTIES.--The commission shall receive applications for initial
 19 chartering and renewals of charters for charter schools that
 20 want to be chartered by the state and approve or disapprove
 21 those charter applications. The commission may approve, deny,
 22 suspend or revoke the charter of a state-chartered charter
 23 school in accordance with the provisions of the Charter Schools
 24 Act. The chartering authority for a charter school existing on
 25 July 1, 2007 may be transferred to the commission; provided,

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1 however, that if a school chartered under a previous chartering
2 authority chooses to transfer its chartering authority, it
3 shall continue to operate under the provisions of that charter
4 until its renewal date unless it is suspended or revoked by the
5 commission. An application for a charter school filed with a
6 local school board prior to July 1, 2007, but not approved, may
7 be transferred to the commission on July 1, 2007."

8 Section 30. A new section of the Charter Schools Act is
9 enacted to read:

10 "[NEW MATERIAL] CHARTER SCHOOLS DIVISION--DUTIES.--The
11 "charter schools division" is created in the department. The
12 division shall:

- 13 A. provide staff support to the commission;
14 B. provide technical support to all charter
15 schools;
16 C. review and approve state-chartered charter
17 school budget matters; and
18 D. make recommendations to the commission regarding
19 the approval, denial, suspension or revocation of the charter
20 of a state-chartered charter school."

21 Section 31. Section 22-8B-4 NMSA 1978 (being Laws 1999,
22 Chapter 281, Section 4, as amended) is amended to read:

23 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--
24 OPERATION.--

- 25 A. A charter school shall be subject to all federal

1 and state laws and constitutional provisions prohibiting
2 discrimination on the basis of disability, race, creed, color,
3 gender, national origin, religion, ancestry or need for special
4 education services.

5 B. A charter school shall be governed by a
6 governing body in the manner set forth in the charter; provided
7 that a governing body shall have at least five members; and
8 provided further that no member of a governing body for a
9 charter school that is initially approved on or after July 1,
10 2005 or whose charter is renewed on or after July 1, 2005 shall
11 serve on the governing body of another charter school.

12 C. A charter school shall be responsible for:

13 (1) its own operation, including preparation
14 of a budget, subject to audits pursuant to the Audit Act; and

15 (2) contracting for services and personnel
16 matters.

17 D. A charter school may contract with a school
18 district, a university or college, the state, another political
19 subdivision of the state, the federal government or one of its
20 agencies, a tribal government or any other third party for the
21 use of a facility, its operation and maintenance and the
22 provision of any service or activity that the charter school is
23 required to perform in order to carry out the educational
24 program described in its charter [~~provided that~~]. Facilities
25 used by a charter school shall meet the standards required

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1 pursuant to Section 22-8B-4.2 NMSA 1978.

2 E. A conversion school chartered before July 1,
3 2007 may choose to continue using the school district
4 facilities and equipment it had been using prior to conversion,
5 subject to the provisions of Subsection F of this section.

6 F. ~~[A]~~ The school district in which a charter
7 school is geographically located shall provide a charter school
8 with available facilities for the school's operations unless
9 the facilities are currently used for other educational
10 purposes. A charter school shall not be required to pay rent
11 for the school district facilities if the facilities can be
12 provided at no cost to the school district. If facilities are
13 available but cannot be provided at no cost to the school
14 district, the school district shall not charge more than the
15 actual direct cost of providing the facilities. As used in
16 this subsection, "other educational purposes" includes health
17 clinics, daycare centers, teacher training centers, school
18 district administration functions and other ancillary services
19 related to a school district's functions and operations.

20 G. A locally chartered charter school may pay the
21 costs of operation and maintenance of its facilities or may
22 contract with the school district to provide facility operation
23 and maintenance services.

24 H. Locally chartered charter school facilities are
25 eligible for state and local capital outlay funds and shall be

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1 included in the school district's five-year facilities plan.

2 I. A locally chartered charter school shall
3 negotiate with a school district to provide transportation to
4 students eligible for transportation under the provisions of
5 the Public School Code. The school district, in conjunction
6 with the charter school, may establish a limit for student
7 transportation to and from the charter school site not to
8 extend beyond the school district boundary.

9 J. A charter school shall be a nonsectarian,
10 nonreligious and non-home-based public school. [~~that operates~~
11 ~~within a school district~~]

12 K. Except as otherwise provided in the Public
13 School Code, a charter school shall not charge tuition or have
14 admission requirements.

15 L. With the approval of the [~~school district~~]
16 chartering authority, a single charter school may maintain
17 separate facilities at two or more locations within the same
18 school district; but, for purposes of calculating program units
19 pursuant to the Public School Finance Act, the separate
20 facilities shall be treated together as one school.

21 M. A charter school shall be subject to the
22 provisions of Section 22-2-8 NMSA 1978 and the Assessment and
23 Accountability Act.

24 N. Within constitutional and statutory limits, a
25 charter school may acquire and dispose of property; provided

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1 that, upon termination of the charter, all assets of the
2 charter school shall revert to the ~~[local school board]~~ state.

3 O. The governing body of a charter school may
4 accept or reject any charitable gift, grant, devise or bequest;
5 provided that no such gift, grant, devise or bequest shall be
6 accepted if subject to any condition contrary to law or to the
7 terms of the charter. The particular gift, grant, devise or
8 bequest shall be considered an asset of the charter school to
9 which it is given.

10 P. ~~[A charter school]~~ The governing body may
11 contract and sue and be sued. A local school board ~~[that~~
12 ~~approves a charter school]~~ shall not be liable for any acts or
13 omissions of the charter school.

14 Q. A charter school shall comply with all state and
15 federal health and safety requirements applicable to public
16 schools, including those health and safety codes relating to
17 educational building occupancy.

18 R. A charter school is a public school that may
19 contract with a school district or other party for provision of
20 financial management, food services, transportation,
21 facilities, education-related services or other services. The
22 governing body shall not contract with a for-profit entity for
23 the management of the charter school.

24 S. To enable state-chartered charter schools to
25 submit required data to the department, an accountability data

1 system shall be maintained by the department.

2 T. A charter school shall comply with all
 3 applicable state and federal laws and rules related to
 4 providing special education services. Charter school students
 5 with disabilities and their parents retain all rights under the
 6 federal Individuals with Disabilities Education Act and its
 7 implementing state and federal rules. Each charter school is
 8 responsible for identifying, evaluating and offering a free
 9 appropriate public education to all eligible children who are
 10 accepted for enrollment in that charter school. The state-
 11 chartered charter school, as a local educational agency, shall
 12 assume responsibility for determining students' needs for
 13 special education and related services. The division may
 14 promulgate rules to implement the requirements of this
 15 subsection."

16 Section 32. Section 22-8B-5 NMSA 1978 (being Laws 1999,
 17 Chapter 281, Section 5) is amended to read:

18 "22-8B-5. CHARTER SCHOOLS--~~STATUS~~--LOCAL SCHOOL BOARD
 19 AUTHORITY [~~STATE BOARD AUTHORITY~~].--

20 A. The local school board may waive only locally
 21 imposed school district requirements for locally chartered
 22 charter schools.

23 B. A state-chartered charter school is exempt from
 24 school district requirements. A state-chartered charter school
 25 is responsible for developing its own written policies and

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1 procedures in accordance with this section.

2 ~~[B. The state board shall waive requirements~~
3 ~~relating to individual class load and teaching load, length of~~
4 ~~the school day, staffing patterns, subject areas and the~~
5 ~~purchase of instructional material. The state board may]~~

6 C. The department shall waive [state board]
7 requirements or rules and provisions of the Public School Code
8 pertaining to ~~[graduation requirements]~~ individual class load,
9 teaching load, length of the school day, staffing patterns,
10 subject areas, purchase of instructional material, evaluation
11 standards for school personnel, school principal duties and
12 driver education. The department may waive requirements or
13 rules and provisions of the Public School Code pertaining to
14 graduation requirements. Any waivers granted pursuant to this
15 section shall be for the term of the charter granted but may be
16 suspended or revoked earlier by the department.

17 ~~[C.]~~ D. A charter school shall be a public school
18 accredited by the ~~[state board]~~ department and shall be
19 accountable to the ~~[school district's local school board]~~
20 chartering authority for purposes of ensuring compliance with
21 applicable laws, rules and charter provisions.

22 ~~[D. No]~~ E. A local school board shall not require
23 any employee of the school district to be employed in a charter
24 school.

25 ~~[E. No]~~ F. A local school board shall not require

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1 any student residing within the geographic boundary of its
2 district to enroll in a charter school.

3 ~~[F-]~~ G. A student who is suspended or expelled from
4 a locally chartered charter school shall be deemed to be
5 suspended or expelled from the school district in which the
6 student resides."

7 Section 33. Section 22-8B-6 NMSA 1978 (being Laws 1998,
8 Chapter 281, Section 6, as amended) is amended to read:

9 "22-8B-6. CHARTER SCHOOL REQUIREMENTS--APPLICATION
10 PROCESS--AUTHORIZATION--BOARD OF FINANCE DESIGNATION
11 REQUIRED.--

12 A. A local school board has the authority to
13 approve the establishment of a charter school within the school
14 district in which it is located.

15 B. At least one hundred eighty days prior to
16 initial application, the organizers of a proposed charter
17 school shall provide written notification to the commission and
18 the school district in which the charter school is proposed to
19 be located of intent to establish a charter school. Failure to
20 notify may result in an application not being accepted.

21 C. A charter school applicant shall apply to either
22 a local school board or the commission for a charter. [~~An~~
23 ~~applicant shall only submit an application in the district in~~
24 ~~which the school is located.~~] If an application is submitted
25 to a chartering authority, it must process the application.

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1 Applications for initial charters shall be submitted by July 1
2 to be eligible for consideration for the following fiscal year;
3 provided that the July 1 deadline may be waived upon agreement
4 of the applicant and the [~~local school board~~] chartersing
5 authority.

6 D. An application shall include the total number of
7 grades the charter school proposes to provide, either
8 immediately or phased. A charter school may decrease the
9 number of grades it eventually offers, but it shall not
10 increase the number of grades or the total number of students
11 proposed to be served in each grade.

12 [~~E.~~] E. An application shall include a [~~request~~]
13 detailed description of the charter school's projected capital
14 outlay needs, including projected requests for capital outlay
15 [~~funding~~] assistance.

16 [~~D.~~] F. An application for a start-up school may be
17 made by one or more teachers, parents or community members or
18 by a public post-secondary educational institution or nonprofit
19 organization. Municipalities, counties, private post-secondary
20 educational institutions and for-profit business entities are
21 not eligible to apply for or receive a charter.

22 G. An initial application for a charter school
23 shall not be made after June 30, 2007 if the proposed charter
24 school's proposed enrollment for all grades would equal or
25 exceed ten percent of the total MEM of the school district in

1 which the charter school will be geographically located and
 2 that school district has a total enrollment of not more than
 3 one thousand three hundred students.

4 H. An initial application for a charter school
 5 shall not be made after June 30, 2007 if the proposed charter
 6 school's proposed enrollment for all grades would equal or
 7 exceed ten percent of the total MEM of the school district in
 8 which the charter school will be geographically located and
 9 that school district has a total enrollment of not more than
 10 one thousand tree hundred students.

11 I. A state-chartered charter school shall not be
 12 approved for operation unless its governing body has qualified
 13 to be a board of finance.

14 ~~[E. An application for a conversion school shall~~
 15 ~~include a petition of support signed by no less than sixty-five~~
 16 ~~percent of the employees in the school. Additionally, a~~
 17 ~~petition in support of the charter school signed by a majority~~
 18 ~~of the households whose children are enrolled in a proposed~~
 19 ~~conversion school shall accompany the application.~~

20 ~~F.]~~ J. The [local school board] chartering
 21 authority shall receive and review all applications for charter
 22 schools submitted to it. The [local school board] chartering
 23 authority shall not charge application fees. [If the board
 24 finds the charter school application is incomplete, the board
 25 shall request the necessary information from the charter school

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1 applicant.

2 G.] K. The [~~local school board~~] chartering
3 authority shall hold at least one public meeting in the school
4 district in which the charter school is proposed to be located
5 to obtain information and community input to assist [~~the local~~
6 ~~school board~~] it in its decision whether to grant a charter
7 school application. Community input may include written or
8 oral comments in favor of or in opposition to the application
9 from the applicant, the local community and, for state-
10 chartered charter schools, the local school board and school
11 district in whose geographical boundaries the charter school is
12 proposed to be located. The [~~local school board~~] chartering
13 authority shall rule on the application for a charter school in
14 a public meeting within sixty days after receiving the
15 application. If not ruled upon within sixty days, the charter
16 application shall be automatically reviewed by the secretary in
17 accordance with the provisions of Section 22-8B-7 NMSA 1978.
18 The charter school applicant and the [~~local school board~~]
19 chartering authority may, however, jointly waive the deadlines
20 set forth in this section.

21 [~~H. If the local school board denies a charter~~
22 ~~school application or imposes conditions that are unacceptable~~
23 ~~to the charter school applicant, the charter school applicant~~
24 ~~may appeal the decision to the secretary pursuant to Section~~
25 ~~22-8B-7 NMSA 1978.]~~

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1 L. A chartering authority may approve, approve with
2 conditions or deny an application. A chartering authority may
3 deny an application if:

4 (1) the application is incomplete or
5 inadequate;

6 (2) the application does not propose to offer
7 an educational program consistent with the requirements and
8 purposes of the Charter Schools Act;

9 (3) the proposed head administrator or other
10 administrative or fiscal staff was involved with another
11 charter school whose charter was denied or revoked for fiscal
12 mismanagement or the proposed head administrator or other
13 administrative or fiscal staff was discharged from a public
14 school for fiscal mismanagement;

15 (4) for a proposed state-chartered charter
16 school, it does not request to have the governing body of the
17 charter school designated as a board of finance or the
18 governing body does not qualify as a board of finance; or

19 (5) the application is otherwise contrary to
20 the best interests of the charter school's projected students,
21 the local community or the school district in whose geographic
22 boundaries the charter school applies to operate.

23 ~~[F.]~~ M. If [a local school board] the chartering
24 authority denies a charter school application or approves the
25 application with conditions, it shall state its reasons for the

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1 denial or conditions in writing within fourteen days of the
2 meeting. If [~~a local school board~~] the chartering authority
3 grants a charter, [~~it shall send a copy of the approved charter~~
4 ~~to the department within fifteen days after granting the~~
5 ~~charter~~] the approved charter shall be provided to the
6 applicant together with any imposed conditions.

7 N. A charter school that has received a notice from
8 the chartering authority denying approval of the charter shall
9 have a right to a hearing by the secretary as provided in
10 Section 22-8B-7 NMSA 1978."

11 Section 34. Section 22-8B-7 NMSA 1978 (being Laws 1999,
12 Chapter 281, Section 7, as amended) is amended to read:

13 "22-8B-7. [~~CHARTER SCHOOL APPLICATION~~] APPEAL OF DENIAL,
14 NONRENEWAL, SUSPENSION OR REVOCATION--[~~APPEAL~~] PROCEDURES.--

15 A. The secretary, upon receipt of a notice of
16 appeal or upon the secretary's own motion, shall review
17 decisions of [~~a local school board~~] a chartering authority
18 concerning charter schools in accordance with the provisions of
19 this section.

20 B. A charter applicant or governing body that
21 wishes to appeal a decision of [~~a local school board~~] the
22 chartering authority concerning the denial, nonrenewal,
23 suspension or revocation of a charter school or the imposition
24 of conditions that are unacceptable to the charter school or
25 charter school applicant shall provide the secretary with a

1 notice of appeal within thirty days after the [~~local school~~
2 ~~board's~~] chartering authority's decision. The charter school
3 applicant or governing body bringing the appeal shall limit the
4 grounds of the appeal to the grounds for denial, nonrenewal,
5 suspension or revocation or the imposition of conditions that
6 were specified by the [~~local school board~~] chartering
7 authority. The notice shall include a brief statement of the
8 reasons the charter school applicant or governing body contends
9 the [~~local school board's~~] chartering authority's decision was
10 in error. Except as provided in Subsection E of this section,
11 the appeal and review process shall be as follows [~~(1)~~] within
12 sixty days after receipt of the notice of appeal, the
13 secretary, at a public hearing that may be held in the school
14 district in which the charter school is located or in which the
15 proposed charter school has applied for a charter, shall review
16 the decision of the [~~local school board~~] chartering authority
17 and make findings. If the secretary finds that the [~~local~~
18 ~~school board's decision was contrary to the best interests of~~
19 ~~the students, school district or community, the secretary shall~~
20 ~~remand the decision to the local school board with written~~
21 ~~instructions for approval of the charter. The instructions~~
22 ~~shall include specific recommendations concerning approval of~~
23 ~~the charter~~] chartering authority acted arbitrarily or
24 capriciously, rendered a decision not supported by substantial
25 evidence or did not act in accordance with law, the secretary

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1 may reverse the decision of the chartering authority and order
2 the approval of the charter with or without conditions. The
3 decision of the secretary shall be final [~~and not subject to~~
4 ~~appeal; and~~

5 ~~(2) within thirty days following the remand of~~
6 ~~a decision by the secretary, the local school board, at a~~
7 ~~public hearing, shall approve the charter].~~

8 C. The secretary, on the secretary's own motion,
9 may review a [~~local school board's~~] chartering authority's
10 decision to grant a charter. Within sixty days after the
11 making of a motion to review by the secretary, the secretary,
12 at a public hearing that may be held in the school district in
13 which the proposed charter school that has applied for a
14 charter will be located, shall review the decision of the
15 [~~local school board~~] chartering authority and determine whether
16 the decision was arbitrary or capricious or whether the
17 establishment or operation of the proposed charter school
18 would:

19 (1) violate any federal or state laws
20 concerning civil rights;
21 (2) violate any court order; or
22 (3) threaten the health and safety of students
23 within the school district [~~or~~

24 ~~(4) violate the provisions of Section~~
25 ~~22-8B-11 NMSA 1978, prescribing the permissible number of~~

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1 ~~charter schools~~].

2 D. If the secretary determines that the charter
3 would violate the provisions set forth in Subsection C of this
4 section, the secretary shall ~~[remand the decision back to the~~
5 ~~local school board with instructions to]~~ deny the charter
6 application. The secretary may extend the time lines
7 established in this section for good cause. The decision of
8 the secretary shall be final ~~[and not subject to appeal]~~.

9 E. If a ~~[local school board]~~ chartering authority
10 denies an application or refuses to renew a charter because the
11 public school capital outlay council has determined that the
12 facilities do not meet the standards required by Section
13 22-8B-4.2 NMSA 1978, the charter school applicant or charter
14 school may appeal the decision to the secretary as otherwise
15 provided in this section; provided that the secretary shall
16 reverse the decision of the ~~[local school board]~~ chartering
17 authority only if the secretary determines that the decision
18 was arbitrary, capricious, not supported by substantial
19 evidence or otherwise not in accordance with the law.

20 F. A person aggrieved by a final decision of the
21 secretary may appeal the decision to the district court
22 pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

23 Section 35. Section 22-8B-8 NMSA 1978 (being Laws 1999,
24 Chapter 281, Section 8) is amended to read:

25 "22-8B-8. CHARTER APPLICATION--CONTENTS.--The charter

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1 school application [~~whether~~] for a start-up school [~~or a~~
2 ~~conversion school~~] shall be a proposed agreement between the
3 [~~local school board~~] chartering authority and the charter
4 school and shall include:

5 A. the mission statement of the charter school;

6 B. the goals, objectives and student performance
7 standards to be achieved by the charter school;

8 C. a description of the charter school's
9 educational program, student performance standards and
10 curriculum that must meet or exceed the [~~state board of~~
11 ~~education's~~] department's educational standards and must be
12 designed to enable each student to achieve those standards;

13 D. a description of the way a charter school's
14 educational program will meet the individual needs of the
15 students, including those students determined to be at risk;

16 E. a description of the charter school's plan for
17 evaluating student performance, the types of assessments that
18 will be used to measure student progress toward achievement of
19 the state's standards and the school's student performance
20 standards, the time line for achievement of the standards and
21 the procedures for taking corrective action in the event that
22 student performance falls below the standards;

23 F. evidence that the plan for the charter school is
24 economically sound, including a proposed budget for the term of
25 the charter and a description of the manner in which the annual

1 audit of the financial and administrative operations of the
2 charter school is to be conducted;

3 G. evidence that the fiscal management of the
4 charter school complies with all applicable federal and state
5 laws and ~~[regulations]~~ rules relative to fiscal procedures;

6 H. evidence of a plan for the displacement of
7 students, teachers and other employees who will not attend or
8 be employed in the conversion school;

9 I. a description of the governing body and
10 operation of the charter school, including:

11 (1) how the initial governing body will be
12 selected;

13 (2) qualification and terms of members, how
14 vacancies on the governing body will be filled and procedures
15 for changing governing body membership; and

16 (3) the nature and extent of parental,
17 professional educator and community involvement in the
18 governance and operation of the school [~~and the relationship~~
19 ~~between the governing body and the local school board~~];

20 J. an explanation of the relationship that will
21 exist between the proposed charter school and its employees,
22 including evidence that the terms and conditions of employment
23 will be addressed with affected employees and their recognized
24 representatives, if any;

25 K. the employment and student discipline policies

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1 of the proposed charter school;

2 L. for a locally chartered charter school, an
3 agreement between the charter school and the local school board
4 regarding their respective legal liability and applicable
5 insurance coverage;

6 M. a description of how the charter school plans to
7 meet the transportation and food service needs of its students;

8 N. a description of the waivers that the charter
9 school is requesting from the local school board and the [~~state~~
10 ~~board~~] department and the charter school's plan for addressing
11 these waiver requests;

12 O. a description of the facilities the charter
13 school plans to use; and

14 P. any other information reasonably required by the
15 [~~local school board~~] chartering authority."

16 Section 36. Section 22-8B-9 NMSA 1978 (being Laws 1999,
17 Chapter 281, Section 9) is amended to read:

18 "22-8B-9. CHARTER SCHOOL--CONTRACT CONTENTS--RULES.--

19 A. An approved charter application [~~shall be~~] is a
20 contract between the charter school and the [~~local school~~
21 ~~board~~] chartering authority.

22 B. The [~~contract between the charter school and the~~
23 ~~local school board~~] charter shall reflect all agreements
24 regarding the release of the charter school from [~~school~~
25 ~~district~~] department rules and policies.

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1 C. For locally chartered charter schools, the
2 contract between the charter school and the local school board
3 shall reflect all requests for release of the charter school
4 from [~~state board~~] department rules or the Public School Code.
5 Within ten days after the contract is approved by the local
6 school board, any request for release from [~~state board~~]
7 department rules or the Public School Code shall be delivered
8 by the local school board to the [~~state board~~] department. If
9 the [~~state board~~] department grants the request, it shall
10 notify the local school board and the charter school of its
11 decision. If the [~~state board~~] department denies the request,
12 it shall notify the local school board and the charter school
13 that the request is denied and specify the reasons for denial.

14 D. Upon approval of the charter, [~~by the local~~
15 ~~school board, the charter school shall be waived from~~] the
16 Public School Code provisions relating to [~~individual class~~
17 ~~load and~~] teaching load requirements, length of school day,
18 staffing patterns, subject areas and purchase of instructional
19 materials may be waived.

20 E. The charter school shall participate in the
21 public school insurance authority.

22 F. Any revision or amendment to the terms of the
23 [~~contract may~~] charter shall be made only with the approval of
24 the [~~local school board~~] chartering authority and the governing
25 body of the charter school.

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1 G. For locally chartered charter schools, the
2 charter shall include procedures agreed upon by the charter
3 school and the local school board for the resolution of
4 disputes between the charter school and the local school board.
5 [~~H.~~] The charter shall include procedures that shall be agreed
6 upon by the charter school and the local school board in the
7 event that [~~such~~] the board determines that the charter shall
8 be revoked pursuant to the provisions of Section [~~12 of the~~
9 ~~1999 Charter Schools Act~~] 22-8B-12 NMSA 1978."

10 Section 37. Section 22-8B-10 NMSA 1978 (being Laws 1999,
11 Chapter 281, Section 10) is amended to read:

12 "22-8B-10. CHARTER SCHOOLS--~~[EMPLOYEE OPTIONS--HIRING~~
13 ~~AND FIRING]~~ EMPLOYEES.--

14 A. [~~Notwithstanding the provisions of Section~~
15 ~~22-5-4 NMSA 1978]~~ A charter school shall hire its own
16 employees. The provisions of the School Personnel Act shall
17 [~~otherwise~~] apply to such employees; provided, however, that a
18 charter school may determine by indicating in its charter that
19 either its governing body or head administrator shall make all
20 employment decisions. The governing body shall be deemed to be
21 responsible for making all employment decisions if the charter
22 does not specify the decision maker.

23 [B. ~~An employee of a conversion school who was~~
24 ~~previously an employee of the school district in which the~~
25 ~~conversion school is located shall be considered to be on a~~

1 ~~one-year leave of absence from the school district. The leave~~
2 ~~of absence shall commence on the initial date of employment for~~
3 ~~the charter school. Upon request of the employee, the one-year~~
4 ~~leave of absence shall be renewed for up to two additional one-~~
5 ~~year periods, absent good cause.~~

6 ~~G. The time during which an employee is on a leave~~
7 ~~of absence shall be counted for longevity credit on the school~~
8 ~~district's salary schedule.~~

9 ~~D. During the period of time that an employee is on~~
10 ~~a leave of absence from the school district and is actively~~
11 ~~employed by the charter school, the charter school shall~~
12 ~~continue the retirement or other benefits previously granted to~~
13 ~~the employee.~~

14 ~~E. A leave of absence shall not be considered a~~
15 ~~break in service with the school district with which an~~
16 ~~employee was previously employed.~~

17 ~~F. An employee who is on a leave of absence and~~
18 ~~actively teaching at a charter school and who submits a notice~~
19 ~~of intent to return to the school district in which the~~
20 ~~employee was employed immediately prior to employment in the~~
21 ~~charter school shall be given employment preference by the~~
22 ~~school district if:~~

23 ~~(1) the employee's notice of intent to return~~
24 ~~is submitted to the school district within three years after~~
25 ~~ceasing employment with the school district; and~~

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1 ~~(2) if the employee is a teacher, a position~~
2 ~~for which the teacher is certified or is qualified to become~~
3 ~~certified is available. If the employee is not a teacher, a~~
4 ~~position for which the employee is qualified is available.~~

5 ~~G. An employee who is on leave of absence and~~
6 ~~employed by a charter school and is discharged or terminated~~
7 ~~for just cause by the charter school shall be considered~~
8 ~~discharged or terminated by the school district.]~~

9 B. A charter school shall not initially employ or
10 approve the initial employment of a head administrator who is
11 the spouse, father, father-in-law, mother, mother-in-law, son,
12 son-in-law, daughter or daughter-in-law of a member of the
13 governing body. A charter school shall not initially employ or
14 approve the initial employment of a licensed school employee
15 who is the spouse, father, father-in-law, mother, mother-in-
16 law, son, son-in-law, daughter or daughter-in-law of the head
17 administrator. The governing body may waive the nepotism rule
18 for family members of a head administrator.

19 C. Nothing in this section shall prohibit the
20 continued employment of a person employed on or before July 1,
21 2007."

22 Section 38. Section 22-8B-11 NMSA 1978 (being Laws 1999,
23 Chapter 281, Section 11) is amended to read:

24 "22-8B-11. CHARTER SCHOOLS--MAXIMUM NUMBER
25 ESTABLISHED.--

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1 A. ~~[Local school boards]~~ The commission shall
 2 authorize the approval of ~~[both conversion and]~~ start-up
 3 charter schools ~~[within their school districts].~~

4 B. No more than fifteen start-up schools ~~[and five~~
 5 ~~conversion schools]~~ may be established per year statewide. The
 6 number of charter school slots remaining in that year shall be
 7 transferred to succeeding years up to a maximum of seventy-five
 8 start-up schools ~~[and twenty-five conversion schools]~~ in any
 9 five-year period. ~~[The state board shall promptly notify the~~
 10 ~~local school board of each school district when the limits set~~
 11 ~~forth in this section have been reached.]"~~

12 Section 39. Section 22-8B-12 NMSA 1978 (being Laws 1999,
 13 Chapter 281, Section 12, as amended) is amended to read:

14 "22-8B-12. CHARTER SCHOOLS--TERM--RENEWAL OF CHARTER--
 15 GROUNDS FOR NONRENEWAL OR REVOCATION.--

16 A. A charter school may be approved for an initial
 17 term of six years; provided that the first year shall be used
 18 exclusively for planning and not for completing the
 19 application. A charter may be renewed for successive periods
 20 of five years each. Approvals of less than five years may be
 21 agreed to between the charter school and the ~~[local school~~
 22 ~~board]~~ chartering authority.

23 B. Prior to the end of the planning year, the
 24 charter school shall demonstrate that its facilities meet the
 25 requirements of Section 22-8B-4.2 NMSA 1978.

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1 C. Prior to the end of the planning year, a state-
2 chartered charter school shall demonstrate that it has
3 qualified as a board of finance and has satisfied any
4 conditions imposed by the commission before commencing full
5 operation for the remainder of its charter term. The
6 commission shall either issue or refuse to issue the
7 authorization to commence full operation within twenty-one days
8 of the request. If the commission refuses to issue the
9 authorization, it shall provide its reasons in writing to the
10 charter school.

11 ~~[C.]~~ D. No later than [January 1 of the year prior
12 to the year] two hundred seventy days prior to the date in
13 which the charter expires, the governing body may submit a
14 renewal application to the [local school board] chartering
15 authority. A charter school may apply to a different
16 chartering authority for renewal. The [local school board]
17 chartering authority shall rule in a public hearing on the
18 renewal application no later than [March 1 of the fiscal year
19 in which the charter expires, or on a mutually agreed-upon
20 date] one hundred eighty days prior to the expiration of the
21 charter.

22 ~~[D.]~~ E. A charter school renewal application
23 submitted to the [local school board] chartering authority
24 shall contain:

- 25 (1) a report on the progress of the charter

1 school in achieving the goals, objectives, student performance
2 standards, state minimum educational standards and other terms
3 of the initial approved charter application, including the
4 accountability requirements set forth in the Assessment and
5 Accountability Act;

6 (2) a financial statement that discloses the
7 costs of administration, instruction and other spending
8 categories for the charter school that is understandable to the
9 general public, that allows comparison of costs to other
10 schools or comparable organizations and that is in a format
11 required by the department;

12 (3) contents of the charter application set
13 forth in Section 22-8B-8 NMSA 1978;

14 (4) a petition in support of the charter
15 school renewing its charter status signed by not less than
16 sixty-five percent of the employees in the charter school;

17 (5) a petition in support of the charter
18 school renewing its charter status signed by [~~a majority~~] at
19 least seventy-five percent of the households whose children are
20 enrolled in the charter school; and

21 (6) a description of the charter school
22 facilities and assurances that the facilities are in compliance
23 with the requirements of Section 22-8B-4.2 NMSA 1978.

24 [~~E-~~] F. A charter may be suspended, revoked or not
25 renewed by the [~~local school board~~] chartering authority if the

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1 ~~[board]~~ chartering authority determines that the charter school
2 did any of the following:

3 (1) committed a material violation of any of
4 the conditions, standards or procedures set forth in the
5 charter;

6 (2) failed to meet or make substantial
7 progress toward achievement of the ~~[state board]~~ department's
8 minimum educational standards or student performance standards
9 identified in the charter application;

10 (3) failed to meet generally accepted
11 standards of fiscal management; or

12 (4) violated any provision of law from which
13 the charter school was not specifically exempted.

14 ~~[F.]~~ G. If a ~~[local school board]~~ chartering
15 authority suspends, revokes or does not renew a charter, the
16 ~~[local school board]~~ chartering authority shall state in
17 writing its reasons for the suspension, revocation or
18 nonrenewal.

19 ~~[G.]~~ H. A decision to suspend, revoke or not to
20 renew a charter may be appealed by the governing body pursuant
21 to Section 22-8B-7 NMSA 1978."

22 Section 40. Section 22-8B-13 NMSA 1978 (being Laws 1999,
23 Chapter 281, Section 13) is amended to read:

24 "22-8B-13. CHARTER SCHOOL FINANCING.--

25 A. The amount of funding allocated to ~~[the]~~ a

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1 charter school shall be not less than ninety-eight percent of
 2 the school-generated program cost. The school district or
 3 division may withhold and use two percent of the school-
 4 generated program cost for its administrative support of a
 5 charter school.

6 B. That portion of money from state or federal
 7 programs generated by students enrolled in a locally chartered
 8 charter school shall be allocated to that charter ~~[schools]~~
 9 school serving students eligible for that aid. Any other
 10 public school program not offered by the locally chartered
 11 charter school shall not be entitled to the share of money
 12 generated by a charter school program.

13 C. When a state-chartered charter school is
 14 designated as a board of finance pursuant to Section 22-8-38
 15 NMSA 1978, it shall receive state and federal funds for which
 16 it is eligible.

17 D. Charter schools may apply for all federal funds
 18 for which they are eligible.

19 ~~[G-]~~ E. All services centrally or otherwise
 20 provided by ~~[the]~~ a local school district, including custodial,
 21 maintenance and media services, libraries and warehousing shall
 22 be subject to negotiation between the charter school and the
 23 ~~[local]~~ school district. Any services for which a charter
 24 school contracts with a school district shall be provided by
 25 the district at a reasonable cost."

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1 Section 41. Section 22-12-2 NMSA 1978 (being Laws 1967,
2 Chapter 16, Section 170, as amended) is amended to read:

3 "22-12-2. COMPULSORY SCHOOL ATTENDANCE--
4 RESPONSIBILITY.--

5 A. Any qualified student and any person who because
6 of [~~his~~] the person's age is eligible to become a qualified
7 student as defined by the Public School Finance Act until
8 attaining the age of majority shall attend a public school, a
9 private school, a home school or a state institution. A person
10 shall be excused from this requirement if:

11 (1) the person is specifically exempted by law
12 from the provisions of this section;

13 (2) the person has graduated from a high
14 school;

15 (3) the person is at least seventeen years of
16 age and has been excused by the local school board or the
17 governing body of a state-chartered charter school or its
18 authorized representative upon a finding that the person will
19 be employed in a gainful trade or occupation or engaged in an
20 alternative form of education sufficient for the person's
21 educational needs and the parent [~~guardian or other person~~
22 ~~having custody and control~~] consents; or

23 (4) with consent of the parent of the person
24 to be excused, the person is excused from the provisions of
25 this section by the superintendent of schools of the school

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1 district [~~in which the person is a resident~~] or by the head
2 administrator of the state-chartered charter school and the
3 person is under eight years of age.

4 B. A person subject to the provisions of the
5 Compulsory School Attendance Law shall attend school for at
6 least the length of time of the school year that is established
7 in the school district in which the person is a resident or the
8 state-chartered charter school in which the person is enrolled.

9 C. Any parent of a person subject to the provisions
10 of the Compulsory School Attendance Law is responsible for the
11 school attendance of that person.

12 D. Each local school board and each governing
13 [~~authority~~] body of a charter school or private school shall
14 enforce the provisions of the Compulsory School Attendance Law
15 for students enrolled in their respective schools."

16 Section 42. Section 22-12-3 NMSA 1978 (being Laws 1971,
17 Chapter 238, Section 1, as amended) is amended to read:

18 "22-12-3. RELIGIOUS INSTRUCTION EXCUSAL.--A student may,
19 subject to the approval of the school principal, be excused
20 from school to participate in religious instruction for not
21 more than one class period each school day with the written
22 consent of [~~his~~] the student's parents at a time period not in
23 conflict with the academic program of the school. The local
24 school board or governing body of a charter school, and its
25 school employees, shall not assume responsibility for the

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1 religious instruction or permit it to be conducted on school
2 property."

3 Section 43. Section 22-12-7 NMSA 1978 (being Laws 1967,
4 Chapter 16, Section 175, as amended) is amended to read:

5 "22-12-7. ENFORCEMENT OF ATTENDANCE LAW--HABITUAL
6 TRUANTS--PENALTY.--

7 A. Each local school board and each governing
8 [~~authority~~] body of a charter school or private school shall
9 initiate the enforcement of the provisions of the Compulsory
10 School Attendance Law for students enrolled in their respective
11 schools.

12 B. To initiate enforcement of the provisions of the
13 Compulsory School Attendance Law against an habitual truant, a
14 local school board or governing [~~authority~~] body of a charter
15 school or private school or its authorized representatives
16 shall give written notice of the habitual truancy by certified
17 mail to or by personal service on the parent of the student
18 subject to and in noncompliance with the provisions of the
19 Compulsory School Attendance Law.

20 C. If unexcused absences continue after written
21 notice of habitual truancy as provided in Subsection B of this
22 section has occurred, the student shall be reported to the
23 probation services office of the judicial district where the
24 student resides for an investigation as to whether the student
25 shall be considered to be a neglected child or a child in a

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1 family in need of services because of habitual truancy and thus
2 subject to the provisions of the Children's Code. In addition
3 to any other disposition, the children's court may order the
4 habitual truant's driving privileges to be suspended for a
5 specified time not to exceed ninety days on the first finding
6 of habitual truancy and not to exceed one year for a subsequent
7 finding of habitual truancy.

8 D. If, after review by the juvenile probation
9 office where the student resides, a determination and finding
10 is made that the habitual truancy by the student may have been
11 caused by the parent of the student, then the matter will be
12 referred by the juvenile probation office to the district
13 attorney's office or any law enforcement agency having
14 jurisdiction for appropriate investigation and filing of
15 charges allowed under the Compulsory School Attendance Law.
16 Charges against the parent may be filed in metropolitan court,
17 magistrate court or district court.

18 E. A parent of the student who, after receiving
19 written notice as provided in Subsection B of this section and
20 after the matter has been reviewed in accordance with
21 Subsection D of this section, knowingly allows the student to
22 continue to violate the Compulsory School Attendance Law shall
23 be guilty of a petty misdemeanor. Upon the first conviction, a
24 fine of not less than twenty-five dollars (\$25.00) or more than
25 one hundred dollars (\$100) may be imposed, or the parent of the

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1 student may be ordered to perform community service. If
2 violations of the Compulsory School Attendance Law continue,
3 upon the second and subsequent convictions, the parent of the
4 student who knowingly allows the student to continue to violate
5 the Compulsory School Attendance Law shall be guilty of a petty
6 misdemeanor and shall be subject to a fine of not more than
7 five hundred dollars (\$500) or imprisonment for a definite term
8 not to exceed six months or both.

9 F. The provisions of this section shall apply
10 beginning July 1, 2004."

11 Section 44. Section 22-12-8 NMSA 1978 (being Laws 1985,
12 Chapter 104, Section 1, as amended) is amended to read:

13 "22-12-8. EARLY IDENTIFICATION--UNEXCUSED ABSENCES AND
14 TRUANCY.--Notwithstanding the provisions of Section 22-12-7
15 NMSA 1978, if a student is truant, the school district or
16 charter school shall contact the student's parent to inform the
17 parent that the student is truant and to discuss possible
18 interventions. The provisions of this section do not apply to
19 any absence if the parent has contacted the school to explain
20 the absence."

21 Section 45. Section 22-12-9 NMSA 1978 (being Laws 2004,
22 Chapter 28, Section 1, as amended) is amended to read:

23 "22-12-9. UNEXCUSED ABSENCES AND TRUANCY--ATTENDANCE
24 POLICIES.--

25 A. As used in this section and Sections 22-12-7 and

1 22-12-8 NMSA 1978:

2 (1) "habitual truant" means a student who has
3 accumulated the equivalent of ten or more unexcused absences
4 within a school year;

5 (2) "truant" means a student who has
6 accumulated five unexcused absences within any twenty-day
7 period; and

8 (3) "unexcused absence" means an absence from
9 school or a class for which the student does not have an
10 allowable excuse pursuant to the Compulsory School Attendance
11 Law or rules of the local school board or governing authority
12 of a charter school or private school.

13 B. Each school district and charter school shall
14 maintain an attendance policy that:

15 (1) provides for early identification of
16 students with unexcused absences, truants and habitual truants
17 and provides intervention strategies that focus on keeping
18 truants in an educational setting and prohibit out-of-school
19 suspension and expulsion as the punishment for truancy;

20 (2) uses withdrawal as provided in Section
21 22-8-2 NMSA 1978 only after exhausting efforts to keep students
22 in educational settings; and

23 (3) requires that class attendance be taken
24 for every instructional day in every public school or school
25 program in the school district.

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1 C. School districts and charter schools shall
2 report truancy and habitual truancy rates to the department in
3 a form and at such times as the department determines and shall
4 document efforts made to keep truants and habitual truants in
5 educational settings. Locally chartered charter schools shall
6 provide copies of their reports to the school district."

7 Section 46. Section 22-13-3.7 NMSA 1978 (being Laws
8 1989, Chapter 113, Section 5, as amended) is amended to read:

9 "22-13-3.7. DISBURSEMENT OF FUNDS--APPROVED PROJECTS.--

10 A. Any school district or state-chartered charter
11 school may apply for a grant from the literacy for children at
12 risk fund for the purpose of acquiring, equipping and staffing
13 a learning laboratory.

14 B. The department shall adopt [~~regulations~~] rules
15 setting forth the criteria that a school district or state-
16 chartered charter school shall meet in order to qualify for a
17 grant from the literacy for children at risk fund. The
18 criteria to qualify for a grant shall include, but are not
19 limited to, the following:

20 (1) the learning laboratory shall improve the
21 reading, writing or math literacy levels of children at risk by
22 at least one grade level per year, as demonstrated to the
23 department's satisfaction;

24 (2) the learning laboratory shall encompass
25 the teaching of children in kindergarten through grade twelve

1 who are reading below grade level;

2 (3) the learning laboratory shall have reading
3 diagnostic capabilities; and

4 (4) the learning laboratory shall have the
5 capability to self-monitor the performance of both the learning
6 laboratory and the children at risk [~~utilizing~~] using the
7 laboratory.

8 C. The amount of any grant awarded under
9 Subsections A and B of this section shall be equal to eighty
10 percent of the total cost of acquiring, equipping and staffing
11 a learning laboratory. Any grant awarded is contingent upon
12 the qualifying school district or state-chartered charter
13 school demonstrating to the department's satisfaction that it
14 can pay for twenty percent of the total cost of the learning
15 laboratory.

16 D. Any school district or state-chartered charter
17 school that establishes a learning laboratory under this
18 section may use the laboratory for any other reading, writing
19 or math literacy program when it is not in use for the purposes
20 of the Literacy For Children At Risk Act.

21 E. The department, after approving the application
22 of a school district or state-chartered charter school to
23 receive a grant under the Literacy For Children At Risk Act,
24 shall authorize a disbursement of funds, in an amount equal to
25 the grant, from the literacy for children at risk fund directly

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1 to the approved school district or charter school."

2 Section 47. Section 22-15-2 NMSA 1978 (being Laws 1967,
3 Chapter 16, Section 206, as amended) is amended to read:

4 "22-15-2. DEFINITIONS.--As used in the Instructional
5 Material Law:

6 A. "division" or "bureau" means the instructional
7 material bureau of the department;

8 B. "director" or "chief" means the chief of the
9 bureau;

10 C. "instructional material" means school textbooks
11 and other educational media that are used as the basis for
12 instruction, including combinations of textbooks, learning
13 kits, supplementary material and electronic media;

14 D. "multiple list" means a written list of those
15 instructional materials approved by the department;

16 E. "membership" means the total enrollment of
17 qualified students on the fortieth day of the school year
18 entitled to the free use of instructional material pursuant to
19 the Instructional Material Law; [~~and~~]

20 F. "additional pupil" means a pupil in a school
21 district's, state institution's or private school's current
22 year's certified forty-day membership above the number
23 certified in the school district's, state institution's or
24 private school's prior year's forty-day membership; and

25 G. "school district" includes state-chartered

1 charter schools."

2 Section 48. Section 22-15C-1 NMSA 1978 (being Laws 2003,
3 Chapter 149, Section 1) is amended to read:

4 "22-15C-1. SHORT TITLE.--~~[This act]~~ Chapter 22, Article
5 15C NMSA 1978 may be cited as the "School Library Material
6 Act"."

7 Section 49. Section 22-15C-2 NMSA 1978 (being Laws 2003,
8 Chapter 149, Section 2) is amended to read:

9 "22-15C-2. DEFINITIONS.--As used in the School Library
10 Material Act:

11 A. "additional student" means a student in the
12 certified forty-day membership of the current year for a school
13 district or state institution above the number certified in the
14 forty-day membership of the prior year for the school district
15 or state institution;

16 B. "bureau" means the instructional material bureau
17 of the department ~~[of education]~~;

18 C. "fund" means the school library material fund;

19 D. "library material processing" means cataloging
20 of school library material, including in electronic format,
21 according to nationally accepted standards, and the application
22 of bar code labels and call-number classification labels to the
23 material;

24 E. "membership" means the total enrollment of
25 qualified students on the fortieth day of the school year

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1 entitled to the free use of school library material pursuant to
2 the School Library Material Act;

3 F. "qualified student" means a public school
4 student who:

5 (1) has not graduated from high school;

6 (2) is regularly enrolled in one-half or more
7 of the minimum course requirements approved by the [~~state~~
8 ~~board~~] department for public school students; and

9 (3) is at least five years of age prior to
10 12:01 a.m. on September 1 of the school year; or

11 (4) is at least three years of age at any time
12 during the school year and is receiving special education
13 services pursuant to regulation of the [~~state board and~~
14 department];

15 G. "school library material" means books and other
16 educational media, including online reference and periodical
17 databases, that are made available in a school library to
18 students for circulation and use in the library; and

19 H. "school district" includes state-chartered
20 charter schools."

21 Section 50. Section 22-15D-1 NMSA 1978 (being Laws 2003,
22 Chapter 152, Section 1) is amended to read:

23 "22-15D-1. SHORT TITLE.--~~[Sections 1 through 6 of this~~
24 ~~act]~~ Chapter 22, Article 15D NMSA 1978 may be cited as the
25 "Fine Arts Education Act"."

1 Section 51. Section 22-15D-2 NMSA 1978 (being Laws 2003,
2 Chapter 152, Section 2) is amended to read:

3 "22-15D-2. PURPOSE.--

4 A. The purpose of the Fine Arts Education Act is to
5 encourage school districts and state-chartered charter schools
6 to offer opportunities for elementary school students to
7 participate in fine arts activities, including visual arts,
8 music, theater and dance.

9 B. Participation in fine arts programs encourages
10 cognitive and affective development by:

11 (1) focusing on a variety of learning styles
12 and engaging students who might otherwise fail;

13 (2) training students in complex thinking and
14 learning;

15 (3) helping students to devise creative
16 solutions for problems;

17 (4) providing students new challenges; and

18 (5) teaching students how to work
19 cooperatively with others and to understand and value diverse
20 cultures."

21 Section 52. Section 22-15D-4 NMSA 1978 (being Laws 2003,
22 Chapter 152, Section 4) is amended to read:

23 "22-15D-4. [~~STATE BOARD AND~~] DEPARTMENT [~~OF EDUCATION~~]-
24 POWERS AND DUTIES.--[A.] The [~~state board~~] department shall
25 issue guidelines for the development and implementation of fine

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1 arts education programs. [~~B.~~] The department [~~of education~~]
2 shall:

3 [~~(1)~~] A. administer and enforce the provisions of
4 the Fine Arts Education Act; and

5 [~~(2)~~] B. assist [~~local~~] school [~~boards~~] districts
6 and charter schools in developing and evaluating programs."

7 Section 53. Section 22-15D-5 NMSA 1978 (being Laws 2003,
8 Chapter 152, Section 5) is amended to read:

9 "22-15D-5. PROGRAM PLAN AND EVALUATION.--

10 A. A [~~local~~] school [~~board~~] district or state-
11 chartered charter school may prepare and submit to the
12 department [~~of education~~] a fine arts education program plan in
13 accordance with guidelines issued by the [~~state board~~]
14 department.

15 B. At a minimum, the plan shall include the fine
16 arts education programs being taught, the ways in which the
17 fine arts are being integrated into the curriculum and an
18 evaluation component.

19 C. At yearly intervals, the [~~local~~] school [~~board~~]
20 district or state-chartered charter school, the department [~~of~~
21 ~~education~~] and a parent advisory committee from the school
22 district or charter school shall review the goals and
23 priorities of the plan and make appropriate recommendations to
24 the [~~state board~~] secretary."

25 Section 54. Section 22-20-1 NMSA 1978 (being Laws 1967,

1 Chapter 16, Section 270, as amended) is amended to read:

2 "22-20-1. SCHOOL CONSTRUCTION--APPROVAL OF THE PUBLIC
3 SCHOOL FACILITIES AUTHORITY--COMPLIANCE WITH STATEWIDE ADEQUACY
4 STANDARDS--STATE CONSTRUCTION AND FIRE STANDARDS APPLICABLE.--

5 A. Each local school board or governing body of a
6 charter school shall secure the approval of the director of the
7 public school facilities authority or the director's designee
8 prior to the construction or letting of contracts for
9 construction of any school building or related school structure
10 or before reopening an existing structure that was formerly
11 used as a school building but that has not been used for that
12 purpose during the previous year. A written application shall
13 be submitted to the director requesting approval of the
14 construction, and, upon receipt, the director shall forward a
15 copy of the application to the secretary. The director shall
16 prescribe the form of the application, which shall include the
17 following:

- 18 (1) a statement of need;
19 (2) the anticipated number of students
20 affected by the construction;
21 (3) the estimated cost;
22 (4) a description of the proposed construction
23 project;
24 (5) a map of the area showing existing school
25 attendance centers within a five-mile radius and any

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1 obstructions to attending the attendance centers, such as
2 railroad tracks, rivers and limited-access highways; and

3 (6) such other information as may be required
4 by the director.

5 B. The director or the director's designee shall
6 give approval to an application if the director or designee
7 reasonably determines that:

8 (1) the construction will not cause an
9 unnecessary proliferation of school construction;

10 (2) the construction is needed in the school
11 district or by the charter school;

12 (3) the construction is feasible;

13 (4) the cost of the construction is
14 reasonable;

15 (5) the construction project:

16 (a) is in compliance with the statewide
17 adequacy standards adopted pursuant to the Public School
18 Capital Outlay Act; and

19 (b) if relevant, is appropriately
20 integrated into the school district or charter school master
21 plan;

22 (6) the school district or charter school is
23 financially able to pay for the construction; and

24 (7) the secretary has certified that the
25 construction will support the educational program of the school

1 district or charter school.

2 C. Within thirty days after the receipt of an
3 application filed pursuant to this section, the director or the
4 director's designee shall in writing notify the local school
5 board or governing body of a charter school making the
6 application and the department of approval or disapproval of
7 the application.

8 D. A local school board or governing body of a
9 charter school shall not enter into a contract for the
10 construction of a public school facility, including contracts
11 funded with insurance proceeds, unless the contract contains
12 provisions requiring the construction to be in compliance with
13 the statewide adequacy standards adopted pursuant to the Public
14 School Capital Outlay Act; provided that for a contract funded
15 in whole or in part with insurance proceeds:

16 (1) the cost of settlement of any insurance
17 claim shall not be increased by inclusion of the insurance
18 proceeds in the construction contract; and

19 (2) insurance claims settlements shall
20 continue to be governed by insurance policies, memoranda of
21 coverage and rules related to them.

22 E. Public school facilities shall be constructed
23 pursuant to state standards or codes promulgated pursuant to
24 the Construction Industries Licensing Act and rules adopted
25 pursuant to Section 59A-52-15 NMSA 1978 for the prevention and

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1 control of fires in public occupancies. Building standards or
2 codes adopted by a municipality or county do not apply to the
3 construction of public school facilities, except those
4 structures constructed as a part of an educational program of a
5 school district or charter school.

6 F. The provisions of Subsection E of this section
7 relating to fire protection shall not be effective until the
8 public regulation commission has adopted the International Fire
9 Code and all standards related to that code.

10 G. As used in this section, "construction" means
11 any project for which the construction industries division of
12 the regulation and licensing department requires permitting."

13 Section 55. Section 22-20-2 NMSA 1978 (being Laws 1967,
14 Chapter 16, Section 271) is amended to read:

15 "22-20-2. SCHOOL BUILDING CONSTRUCTION--DISTANCE FROM
16 HIGHWAYS.--

17 A. No local school board or governing body of a
18 charter school shall construct or cause the construction of any
19 public school building within four hundred feet of any main
20 artery of travel without the prior written approval of the
21 [~~state board~~] department.

22 B. The district court may enforce the provisions of
23 this section by any appropriate civil remedy in an action
24 brought by an interested party.

25 C. As used in this section, "main artery of travel"

1 means any designated state or federal-aid highway used
 2 primarily to accommodate transient motor traffic through a
 3 municipality and any type of public highway used primarily to
 4 accommodate transient motor traffic through a rural community
 5 or area."

6 Section 56. Section 22-21-1 NMSA 1978 (being Laws 1967,
 7 Chapter 16, Section 282, as amended) is amended to read:

8 "22-21-1. PROHIBITING SALES TO THE DEPARTMENT [~~OF~~
 9 EDUCATION], TO SCHOOL DISTRICTS AND TO SCHOOL PERSONNEL--
 10 EXCEPTION--PENALTY.--

11 A. A member of the [~~state board~~] commission, a
 12 member of a local school board, a member of the governing body
 13 of a charter school, the [~~state superintendent~~] secretary, an
 14 employee of the department [~~of education, a certified school~~
 15 ~~instructor or a certified school administrator~~] or a school
 16 employee shall not, directly or indirectly, sell or be a party
 17 to any transaction to sell any instructional material,
 18 furniture, equipment, insurance, school supplies or work under
 19 contract to the department [~~of education~~], school district or
 20 public school with which [~~he~~] such person is associated or
 21 employed. No such person shall receive any commission or
 22 profit from the sale or any transaction to sell any
 23 instructional material, furniture, equipment, insurance, school
 24 supplies or work under contract to the department [~~of~~
 25 ~~education~~], school district or public school with which [~~he~~]

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1 the person is associated or employed.

2 B. The provisions of this section shall not apply
3 to a person making a sale in the regular course of [~~his~~
4 business who complies with the provisions of Sections [~~13-1-1~~
5 ~~through 13-1-26~~] 13-1-21, 13-1-21.2 and 13-1-22 NMSA 1978. The
6 provisions of this section shall not apply in cases in which
7 [~~certified school instructors or certified school~~
8 ~~administrators~~] school employees contract to perform special
9 services with the department [~~of education~~], school district or
10 public school with which they are associated or employed during
11 time periods wherein service is not required under a contract
12 for instruction, [~~or~~] administration or other employment.

13 C. No member of the [~~state board~~] commission,
14 member of a local school board, [~~state superintendent~~] member
15 of the governing body of a charter school, the secretary,
16 employee of the department [~~of education, certified school~~
17 ~~instructor or certified school administrator~~] or school
18 employee shall solicit or sell or be a party to a transaction
19 to solicit or sell insurance or investment securities to any
20 employee of the department [~~of education~~] or any employee of
21 the school district whom [~~he~~] such person supervises. Nothing
22 in this subsection shall prohibit a financial institution from
23 requiring the purchase of insurance in connection with a loan
24 or offering and selling such insurance in accordance with the
25 provisions of the New Mexico Insurance Code.

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1 D. No state employee who supervises or exercises
 2 control over ~~[local]~~ school districts or charter schools, which
 3 supervision or control includes but is not limited to school
 4 programs, capital outlay and operating budgets, shall enter
 5 into any business relationship with an employee of a local
 6 school district or charter school over which ~~[he]~~ the state
 7 employee exercises supervision or control.

8 E. Any person violating any provision of this
 9 section is guilty of a fourth degree felony under the Criminal
 10 Code. The ~~[state board of education]~~ department may suspend or
 11 revoke the ~~[certification of a certified school administrator~~
 12 ~~or a certified school instructor]~~ licensure of a licensed
 13 school employee for violation of this section."

14 Section 57. Section 22-23-2 NMSA 1978 (being Laws 1973,
 15 Chapter 285, Section 2, as amended) is amended to read:

16 "22-23-2. DEFINITIONS.--As used in the Bilingual
 17 Multicultural Education Act:

18 A. "bilingual multicultural education program"
 19 means a program using two languages, including English and the
 20 home or heritage language, as a medium of instruction in the
 21 teaching and learning process;

22 B. "culturally and linguistically different" means
 23 students who are of a different cultural background than
 24 mainstream United States culture and whose home or heritage
 25 language, inherited from the student's family, tribe or country

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1 of origin, is a language other than English;

2 C. "department" means the public education
3 department;

4 D. "district" means a public school or any
5 combination of public schools in a district or a charter
6 school;

7 E. "English language learner" means a student whose
8 first or heritage language is not English and who is unable to
9 read, write, speak or understand English at a level comparable
10 to grade level English proficient peers and native English
11 speakers;

12 F. "heritage language" means a language other than
13 English that is inherited from a family, tribe, community or
14 country of origin;

15 G. "home language" means a language other than
16 English that is the primary or heritage language spoken at home
17 or in the community;

18 H. "school board" means a local school board or
19 governing body of a state-chartered charter school; and

20 I. "standardized curriculum" means a district
21 curriculum that is aligned with the state academic content
22 standards, benchmarks and performance standards."

23 Section 58. Section 22-24-3 NMSA 1978 (being Laws 1975,
24 Chapter 235, Section 3, as amended) is amended to read:

25 "22-24-3. DEFINITIONS.--As used in the Public School

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1 Capital Outlay Act:

2 A. "council" means the public school capital outlay
3 council; ~~and~~

4 B. "fund" means the public school capital outlay
5 fund; and

6 C. "school district" includes state-chartered
7 charter schools."

8 Section 59. TEMPORARY PROVISION--CAPITAL OUTLAY STUDY.--
9 The public school capital outlay oversight task force, in
10 consultation with the public school capital outlay council, the
11 public education department and the public school facilities
12 authority, shall study statutory provisions governing the
13 funding of charter school capital outlay facilities,
14 transportation costs and any other capital outlay issues
15 concerning charter schools and shall make recommendations to
16 the legislative education study committee, the legislative
17 finance committee and the governor by November 1, 2006.

18 Section 60. REPEAL.--

19 A. Section 22-8B-15 NMSA 1978 (being Laws 1999,
20 Chapter 281, Section 15) is repealed.

21 B. Laws 2005, Chapter 176, Section 12 is repealed.

22 Section 61. EFFECTIVE DATE.--The effective date of the
23 provisions of Section 58 of this act is May 17, 2006. The
24 effective date of the provisions of Sections 1 through 57 and
25 59 of this act is July 1, 2007.

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